

KFN/7434/.A2/NGT/V.177

# *The* **NORTH CAROLINA REGISTER**

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**PROPOSED RULES**

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Cosmetic Art Examiners  
Cultural Resources  
Electrical Contractors  
Environment, Health, and Natural Resources  
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JAN 26 1993

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**ISSUE DATE: January 15, 1993**

**Volume 7 • Issue 20 • Pages 2216 - 2381**



## INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

### NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

### ADOPTION AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

### TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

### NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

### CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

# NORTH CAROLINA REGISTER



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# NORTH CAROLINA REGISTER

## *Publication Schedule*

*(August 1992 - December 1993)*

Issue Date	Last Day for Filing	Last Day for Elec- tronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	*Earliest Effective Date
*****	*****	*****	*****	*****	*****	*****
08/03/92	07/13/92	07/20/92	08/18/92	09/02/92	09/20/92	11/02/92
08/14/92	07/24/92	07/31/92	08/29/92	09/13/92	09/20/92	11/02/92
09/01/92	08/11/92	08/18/92	09/16/92	10/01/92	10/20/92	12/01/92
09/15/92	08/25/92	09/01/92	09/30/92	10/15/92	10/20/92	12/01/92
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11/16/92	10/23/92	10/30/92	12/01/92	12/16/92	12/20/92	02/01/93
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01/04/93	12/09/92	12/16/92	01/19/93	02/03/93	02/20/93	04/01/93
01/15/93	12/22/92	12/31/92	01/30/93	02/14/93	02/20/93	04/01/93
02/01/93	01/08/93	01/15/93	02/16/93	03/03/93	03/20/93	05/03/93
02/15/93	01/25/93	02/01/93	03/02/93	03/17/93	03/20/93	05/03/93
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03/15/93	02/22/93	03/01/93	03/30/93	04/14/93	04/20/93	06/01/93
04/01/93	03/11/93	03/18/93	04/16/93	05/01/93	05/20/93	07/01/93
04/15/93	03/24/93	03/31/93	04/30/93	05/15/93	05/20/93	07/01/93
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06/15/93	05/24/93	06/01/93	06/30/93	07/15/93	07/20/93	09/01/93
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12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94

\* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.



**EXECUTIVE ORDER NUMBER 184  
TRANSFERRING THE COMMUTATION/  
PARDON ANALYST POSITION  
ASSIGNED TO THE OFFICE OF THE  
GOVERNOR FROM THE OFFICE OF THE  
PAROLE COMMISSION IN THE  
DEPARTMENT OF CORRECTION  
TO THE OFFICE OF THE  
GOVERNOR**

IT BEING FOUND that the duties of the Commutation/Pardon Analyst assigned to the Office of the Governor by the Parole Commission can be more economically, efficiently and effectively performed by that position being removed from the Office of the Parole Commission in the Department of Correction and transferred to and relocated in the Office of the Governor where it can be subject to and under the direct supervision of the Governor's Legal Counsel;

THEREFORE, pursuant to the authority and powers given to me by Article III, Section 5(10) of the Constitution and North Carolina General Statute 143A-8 and 143B-12, **IT IS ORDERED:**

Section 1. The Commutation/Pardon Analyst position located in the Office of the Parole Commission in the Department of Correction and assigned to the Office of the Governor, is hereby removed from that office and transferred to and relocated in the Office of the Governor, subject to and under the direct supervision of the Governor's Legal Counsel.

Section 2. The Parole Commission, Department of Correction, Office of State Personnel and the Office of State Budget and Management shall do all such things as are required to effect this transfer and relocation.

Section 3. Reports of this transfer and relocation shall be made as required by N.C.G.S. 143B-12(b). My Chief of Staff is directed to do the same.

Section 4. This Order shall be effective as of October 1, 1992.

Done in the Capitol City of Raleigh, North Carolina, this the 22nd day of December, 1992.

**EXECUTIVE ORDER NUMBER 185  
EXTENSION OF EXECUTIVE ORDERS  
12, 13, 15, 27, 29, 39, 43, 53,  
55, 66, 71, 78, 99, 110, 121, 126,  
132, 136, 139, 143, 150, 151, 152,  
153, AND 156.**

**AND  
RESCISSION OF EXECUTIVE ORDERS  
20, 22, 26, 35, 86, 89, 95, 114, 122, 124, 134,  
137, 140 AND 145.**

Pursuant to the authority vested in me as Governor by the Constitution and laws of North Carolina, **IT IS ORDERED:**

Section 1. **EXTENSION OF EXECUTIVE ORDERS**

The Governor's Highway Safety Commission, established by E.O. 12, extended by E.O. 51, reissued by 93, and extended by 161, is hereby extended without amendment for two years.

The North Carolina State Health Coordinating Council, established by E.O. 13, amended by E.O. 51 and 93, and extended by 161, is hereby extended without amendment for two years.

The Juvenile Justice Planning Committee, established by E.O. 15, amended by E.O. 59, 94, and 131, is hereby extended without amendment for two years.

The North Carolina Fund for Children and Families Commission, established by E.O. 27, amended by E.O. 47 and 93, and extended by 161, is hereby extended without amendment for two years.

The Governor's Task Force on Racial, Religious, and Ethnic Violence and Intimidation, established by E.O. 29, amended by E.O. 44, 93, and 161, is hereby extended without amendment for two years.

The Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, established by E.O. 39, reissued by E.O. 93, and extended by 161, is hereby extended without amendment for two years.

The North Carolina Emergency Response Commission, established by E.O. 43, amended by

E.O. 48 and 50, reissured by 93, and amended by 165, is hereby extended without amendment for two years.

The Governor's Inter-Agency Advisory Team on Alcohol and Other Drug Abuse, established by E.O. 53, amended by E.O. 72, 85, 144, and 154, is hereby extended without amendment for two years.

The Martin Luther King, Jr. Holiday Commission, established by E.O. 55, extended by E.O. 101 and 161, is hereby extended without amendment for two years.

The State Employee's Combined Campaign, established by E.O. 66, extended by E.O. 106 and 173, is hereby extended until rescinded.

The Governor's Task Force on Rail Passenger Service, established by E.O. 71, extended by E.O. 94, and amended by 125, is hereby extended, retroactive to December 30, 1991, without amendment for three years.

The Governor's Task Force on Injury Prevention, established by E.O. 78, amended and extended by E.O. 116, is hereby extended, retroactive to November 1, 1992, for two years with the following amendment: Section 3 Functions

• • • •

- B. The Task Force shall advise the Injury Control Section of the Department of Environment, Health, and Natural Resources; as well as the Injury Prevention Research Center.

The Governor's Commission on Reduction of Infant Mortality, established by E.O. 99, is hereby extended, retroactive to December 13, 1991, without amendment for three years.

The Governor's Advisory Council on International Trade, established by E.O. 110, extended by E.O. 161, is hereby extended without amendment for two years.

The Governor's Minority, Female, and Disabled-Owned Businesses Construction Contractors Advisory Committee, established by E.O. 121, amended by 129, is hereby extended, retroactive to July 11, 1992, without amendment for two years.

The Governor's Highway Beautification Council, established by E.O. 126, amended by 133, is hereby extended, retroactive to September 18, 1992, without amendment for two years.

The Governor's Council on Alcohol and Other Drug Abuse, established by E.O. 132, is hereby extended without amendment for two years.

The North Carolina Advisory Council on Telecommunications in Education, established by E.O. 136, is hereby extended without amendment for two years.

The Governor's Volunteer Advisory Council, established by E.O. 139, is hereby extended without amendment for two years.

The North Carolina Advisory Council on Vocational and Applied Technology Education, established by E.O. 143, is hereby extended without amendment for two years.

The North Carolina Human Service Transportation Council, established by E.O. 150, is hereby extended without amendment for two years.

The Governor's Advisory Commission on Military Affairs, established by E.O. 151, amended by E.O. 163 and 170, is hereby extended without amendment for two years.

The Persian Gulf War Memorial Commission, established by E.O. 152, amended by 160 and 167, is hereby extended without amendment for a period of two years.

The North Carolina 2000 Steering Committee, established by E.O. 153, is hereby extended without amendment for a period of two years.

The North Carolina Committee on Literacy and Basic Skills, established by E.O. 156, is hereby extended without amendment for two years.

## **Section 2.      RESCISSION OF EXECUTIVE ORDERS**

E.O. 20, which implemented a wellness improvement program for state employees, is hereby rescinded.

E.O. 22, which implemented certain economies in North Carolina state government to

respond to United States legislation requiring a federal balanced budget, is hereby rescinded.

Operation Hay, implemented by E.O. 26, is hereby rescinded.

E.O. 35, which transferred the State Information Processing Services from the Department of Administration to the Office of State Controller, is hereby rescinded.

E.O. 86, which outlined the State's program for reduction of (1) solid, hazardous, and infectious waste and (2) toxic air pollutants, is hereby rescinded.

E.O. 89, which transferred the State Employee's Advisory Group from the Department of Administration to the Office of State Personnel, is hereby rescinded.

The Governor's Blue Ribbon Commission on Coastal Initiatives, established by E.O. 95, is hereby rescinded.

E.O. 114, which required certain adjustments in the 1989-91 budget to balance the budget, and its amendments in E.O. 130 and 164, are hereby rescinded.

The Governor's Council of Fiscal Advisors, established in E.O. 122, is hereby rescinded.

The Governor's Task Force on Prison Construction and Consolidation, established in E.O. 124, is hereby rescinded.

E.O. 134, which granted readjustment leave to state employees who had served in the Persian Gulf War, is hereby rescinded.

E.O. 137, which implemented an escrow account for contributions to the Teachers' and State Employees' Retirement System, and its amendments in E.O. 138 and 158, are hereby rescinded.

Special Commission to Investigate Shortages in the Northampton County Schools' Finances, established in E.O. 140, is hereby rescinded.

E.O. 145, which transferred the Community Penalties Program from the Department of Crime Control and Public Safety to the Department of Correction, and its suspension in E.O.

146, are hereby rescinded.

This Executive Order is effective immediately.

Done in Raleigh this 29th day of December, 1992.

TITLE 2 - DEPARTMENT OF AGRICULTURE

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Plant Conservation Board intends to amend rules cited as 2 NCAC 48F .0301 and .0302.*

*The proposed effective date of this action is April 1, 1993.*

*The public hearing will be conducted at 10:00 a.m. on February 1, 1993 at the Board Room, Agriculture Bldg., 2 W. Edenton Street, Raleigh, NC 27601.*

*Reason for Proposed Action: To change protected status of several plant species.*

*Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to February 14, 1993 by mail addressed to Cecil Frost, Secretary of the North Carolina Plant Conservation Board, P.O. Box 27647, Raleigh, NC 27611-7647.*

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48F - PLANT CONSERVATION

SECTION .0300 - ENDANGERED PLANT SPECIES LIST: THREATENED PLANT SPECIES LIST: LIST OF SPECIES OF SPECIAL CONCERN

**.0301 ENDANGERED PLANT SPECIES LIST**

The North Carolina Plant Conservation Board hereby establishes the following list of endangered plant species:

- (1) Aeschynomene virginica -- (L.) B.S.P.  
Sensitive Jointvetch;
- (2) Amorpha georgiana var. georgiana -- Wilbur  
Georgiana Indigo-bush;
- (3) Arethusa bulbosa -- L.  
Bog Rose;
- (4) Asplenium heteroresiliens -- W. H. Wagner  
Carolina Spleenwort;
- (5) Asplenium monanthes -- L.  
Single-sorus Spleenwort;
- (6) Aster depauperatus -- Fernald  
Serpentine Aster;
- (7) Bryocrumia andersonii -- (Bartr.) Anders.  
Gorge Moss;
- (8) Buckleya distichophylla -- (Nuttall) Torrey  
Piratebush;
- (9) Calamagrostis cainii -- Hitchcock  
Cain's Reed Grass;
- ~~(10) Calamovilfa brevipilis -- (Torrey) Scribner  
Pine Barrens Sandreed;~~
- ~~(11) (10) Cardamine micranthera -- Rollins  
Small-anthered Bittercress;~~
- ~~(12) (11) Carex aenea -- Fernald  
Fernald's Hay Sedge;~~
- ~~(13) (12) Carex barrattii -- Schweinitz and Torrey~~

- Barratt's Sedge;  
 (+14) ~~Carex manhartii~~ Bryson  
 Manhart's Sedge;  
 (+15) (13) Carex schweinitzii -- Dewey ex Schweinitz  
 Schweinitz's Sedge;  
 (+16) (14) Chrysoma pauciflosculosa -- (Michx.) Greene  
 Woody Goldenrod;  
 (+17) (15) Conioselinum chinense -- (L.) B.S.P.  
 Hemlock Parsley;  
 (+18) (16) Cystopteris tennesseensis -- Shaver  
 Tennessee Bladderfern;  
 (+19) (17) Dalibarda repens -- L.  
 Robin Runaway;  
 (+20) (18) Delphinium exaltatum -- Aiton  
 Tall Larkspur;  
 (+21) (19) Echinacea laevigata -- (Boynton and Beadle) Blake  
 Smooth Coneflower;  
 (+22) (20) Eriocaulon lineare -- Small  
 Linear Pipewort;  
 (+23) ~~Eupatorium resinosum~~ Torrey ex DC  
 Resinous Boneset;  
 (+24) (21) Filipendula rubra -- (Hill) B.L. Robins.  
 Queen-of-the-Prairie;  
 (+25) (22) Gentianopsis crinita -- (Froelich) Ma  
 Fringed Gentian;  
 (+26) (23) Geum radiatum -- Michaux  
 Spreading Avens;  
 (+27) (24) Grammitis nimbata -- (Jenm.) Proctor  
 Dwarf Polypody Fern;  
 (+28) (25) Helianthus schweinitzii -- T. & G.  
 Schweinitz's Sunflower;  
 (+29) (26) Hexastylis contracta -- Blomquist  
 Mountain Heartleaf;  
 (+30) (27) Hexastylis naniflora -- Blomquist  
 Dwarf-flowered Heartleaf;  
 (+31) (28) Houstonia purpurea var. montana -- (Small) Terrell  
 Mountain Bluet;  
 (+32) (29) Hudsonia montana -- Nutt.  
 Mountain Golden Heather;  
 (+33) (30) Hydrastis canadensis -- L.  
 Goldenseal;  
 (+34) (31) Isotria medeoloides -- (Pursh) Raf.  
 Small Whorled Pogonia;  
 (+35) (32) Juncus trifidus ssp. carolinianus -- Hamet Ahti  
 One-flowered Rush;  
 (+36) (33) Kalmia cuneata -- Michaux  
 White Wicky;  
 (+37) (34) Lindera melissaefolia -- (Walter) Blume  
 Southern Spicebush;  
 (+38) (35) Lindera subcoriacea -- Wofford  
 Bog Spicebush;  
 (+39) (36) Lophiola aurea -- Ker-Gawl.  
 Golden Crest;  
 (+40) (37) Lysimachia asperulaefolia -- Poiret  
 Rough-leaf Loosetrife;

- ~~(41)~~ (38) *Lysimachia fraseri* -- Duby  
Fraser's Loosestrife;
- ~~(42)~~ (39) *Minuartia godfreyi* -- (Shinners) McNeill  
Godfrey's Sandwort;
- ~~(43)~~ (40) *Minuartia uniflora* -- (Walter) Mattfield  
Single-flowered Sandwort;
- ~~(44)~~ (41) *Muhlenbergia torreyana* -- (Schultes) Hitchcock  
Torrey's Muhly;
- ~~(45)~~ (42) *Myrica gale* -- L.  
Sweet Gale;
- ~~(46)~~ (43) *Narthecium americanum* -- Ker  
Bog Asphodel;
- ~~(47)~~ (44) *Orbexilum macrophyllum* -- (Rowlee ex Small) Rydberg  
Bigleaf Scurfpea;
- ~~(48)~~ (45) *Orthotrichum keeverae* -- Crum & Anders.  
Keever's Bristle Moss;
- ~~(49)~~ (46) *Oxypolis canbyi* -- (Coul. & Rose) Fern.  
Canby's Cowbane;
- ~~(50)~~ (47) *Parnassia caroliniana* -- Michaux  
Carolina Grass-of-Parnassus;
- ~~(51)~~ (48) *Pellaea wrightiana* -- Hooker  
Wright's Cliff-brake Fern;
- ~~(52)~~ (49) *Plagiochila caduciloba*  
A Liverwort;
- ~~(53)~~ (50) *Plantago cordata* -- Lam.  
Heart-leaf Plantain;
- ~~(54)~~ (51) *Plantago sparsiflora* -- Michaux  
Pineland Plantain;
- ~~(55)~~ (52) *Platanthera integrilabia* -- (Correll) Leur  
White Fringeless Orchid;
- ~~(56)~~ (53) *Poa paludigena* -- Fernald & Wiegand  
Bog Bluegrass;
- ~~(57)~~ (54) *Pteroglossaspis ecristata* -- (Fernald) Rolfe  
Eulophia;
- ~~(58)~~ (55) *Ptilimnium nodosum* -- (Rose) Mathias  
Harperella;
- ~~(59)~~ (56) *Pyxidanthra barbulata* var. *brevifolia* -- (Wells) Ahles  
Wells' Pyxie-moss;
- ~~(60)~~ (57) *Rhus michauxii* -- Sargent  
Michaux's Sumac;
- ~~(58)~~ Rhynchospora crinipes -- Gale  
Mosquito beak sedge;
- ~~(61)~~ (59) *Rhynchospora macra* -- (C.B. Clarke) Small  
Large Beak Sedge;
- ~~(62)~~ (60) *Rudbeckia heliopsidis* -- Torr. & Gray  
Sun-facing coneflower;
- ~~(63)~~ (61) *Sagittaria fasciculata* -- E.O. Beal  
Bunched Arrowhead;
- ~~(64)~~ (62) *Sarracenia jonesii* -- Wherry  
Mountain Sweet Pitcher Plant;
- ~~(65)~~ (63) *Sarracenia oreophila* -- (Kearney) Wherry  
Green Pitcher Plant;
- ~~(66)~~ (64) *Schwalbea americana* -- L.  
Chaffseed;
- ~~(67)~~ (65) *Sedum pusillum* -- Michaux

- Puck's Orpine;
- (68) (66) *Sedum rosea* -- (L.) Scop.  
Roseroot;
- (69) (67) *Senecio schweinitzianus* -- Nuttall  
Schweinitz's Groundsel;
- (70) (68) *Shortia galacifolia* -- T. & G.  
Oconee Bells;
- (71) (69) *Sisyrinchium dichotomum* -- Bicknell  
Reflexed Blue-eyed Grass;
- (72) (70) *Solidago ptarmicoides* -- (Nees) Boivin  
Prairie Goldenrod;
- (73) (71) *Solidago pulchra* -- Small  
Carolina Goldenrod;
- (74) (72) *Solidago spithamea* -- M.A. Curtis  
Blue Ridge Goldenrod;
- (75) (73) *Solidago verna* -- M.A. Curtis ex T. & G.  
Spring-flowering Goldenrod;
- (76) (74) *Spiraea virginiana* -- Britton  
Virginia Spiraea;
- (77) (75) *Sporobolus heterolepis* -- Gray  
Prairie Dropseed;
- (78) (76) *Stylisma pickeringii* var. *pickeringii* -- (Torrey ex M.A. Curtis) Gray  
Pickering's Morning Glory;
- (79) (77) *Thalictrum cooleyi* -- Ahles  
Cooley's Meadowrue;
- (80) (78) *Tortula ammonsiana*  
Ammon's Tortula;
- (81) (79) *Trillium pusillum* -- Michaux  
Carolina Least Trillium;
- (82) (80) *Trisetum spicatum* var. *molle* -- (Michaux) Beal  
Soft Trisetum.

Statutory Authority G.S. 106-202.15.

#### .0302 THREATENED PLANT SPECIES LIST

The North Carolina Plant Conservation Board hereby establishes the following list of threatened plant species:

- (1) *Amaranthus pumilus* -- Raf.  
Seabeach Amaranth;
- (2) *Amorpha georgiana* var. *confusa* -- Wilbur  
Savanna Indigo-bush;
- (3) *Cacalia rugelia* -- (Shuttl. ex Chapm) Barkley & Cronq.  
Rugel's Ragwort;
- (4) *Camassia scilloides* -- (Raf.) Cory  
Wild Hyacinth;
- ~~(5) *Carex chapmanii* -- Steudel  
Chapman's Sedge;~~
- (6) (5) *Carex conoidea* -- Willd.  
Cone-shaped Sedge;
- (6) *Carex exilis* -- Dewey  
Coastal Sedge;
- (7) *Carya myristicaeformis* -- (Michaux f.) Nuttall  
Nutmeg Hickory;
- (8) *Eleocharis halophila* -- Fern. & Brack.  
Salt Spikerush;

- (9) Eupatorium resinosum -- Torr. ex DC.  
Resinous boneset;
- ~~(9)~~ (10) Fimbristylis perpusilla -- Harper ex Small & Britton  
Harper's Fringe-rush;
- ~~(10)~~ (11) Geum geniculatum -- Michaux  
Bent Avens;
- ~~(11)~~ (12) Glyceria nubigena -- W.A. Anderson  
Smoky Mountain Mannagrass;
- ~~(12)~~ (13) Gymnoderma lineare -- (Evans) Yoshimura & Sharp  
Gnome Finger Lichen;
- ~~(13)~~ (14) Helonias bullata -- L.  
Swamp Pink;
- ~~(14)~~ (15) Ilex collina -- Alexander  
Long-stalked Holly;
- ~~(15)~~ (16) Isoetes piedmontana -- (Pfeiffer) Reed  
Piedmont Quillwort;
- ~~(16)~~ (17) Liatris helleri -- (Porter) Porter  
Heller's Blazing Star;
- ~~(17)~~ (18) Lilaeopsis carolinensis -- Coult. & Rose  
Carolina Lilaeopsis;
- ~~(18)~~ (19) Lilium grayi -- Watson  
Gray's Lily;
- ~~(19)~~ (20) Menyanthes trifoliata -- L.  
Buckbean;
- ~~(20)~~ (21) Myriophyllum laxum -- Schuttlew. ex Chapman  
Loose Watermilfoil;
- ~~(21)~~ (22) Platanthera integra -- (Nuttall) Gray ex Beck  
Yellow Fringeless Orchid;
- ~~(22)~~ (23) Platanthera nivea -- (Nutt.) Luer  
Snowy Orchid;
- ~~(23)~~ (24) Portulaca smallii -- P. Wilson  
Small's Portulaca;
- ~~(24)~~ (25) Rhexia aristosa -- Britton  
Awned Meadow-beauty;
- ~~(25)~~ (26) Ruellia humilis -- Nutt.  
Low Wild-petunia;
- ~~(26)~~ (27) Sabatia kennedyana -- Fern.  
Plymouth Gentian;
- ~~(27)~~ (28) Schisandra glabra -- (Brickel) Rehder  
Magnolia-vine;
- ~~(28)~~ (29) Schlotheimia lancifolia -- Bartr.  
Highlands Moss;
- ~~(29)~~ (30) Senecio millefolium -- T. & G.  
Divided-leaf Ragwort;
- ~~(30)~~ (31) Sporobolus teretifolius -- Harper  
Wireleaf Dropseed;
- ~~(31)~~ (32) Thelypteris simulata -- (Davenp.) Nieuwl.  
Bog Fern;
- ~~(32)~~ (33) Trichomanes boschianum -- Sturm ex Bosch  
Appalachian Filmy-fern;
- ~~(33)~~ (34) Trichomanes petersii -- A. Gray  
Dwarf Filmy-fern;
- ~~(34)~~ (35) Trillium discolor -- Wray ex Hook.  
Mottled Trillium;
- ~~(35)~~ (36) Utricularia olivacea -- Wright ex Grisebach



Dwarf Bladderwort.

Statutory Authority G.S. 106-202.15.

## TITLE 7 - DEPARTMENT OF CULTURAL RESOURCES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Cultural Resources intends to amend rule cited as 7 NCAC 4N .0102.*

*The proposed effective date of this action is April 1, 1993.*

*Instructions on How to Demand a Public Hearing: Written request to Dr. William S. Price, Jr., Director, Division of Archives and History, 109 E. Jones Street, Raleigh, NC 27601-2807.*

*Reason for Proposed Action: To stipulate that weaponry may be used in interpretive demonstrations at state historic sites.*

*Comment Procedures: Written comments to Dr. William S. Price, Jr., Director, Division of Archives and History, 109 E. Jones Street, Raleigh, NC 27601-2807 by February 15, 1993.*

### CHAPTER 4 - DIVISION OF ARCHIVES AND HISTORY

#### SUBCHAPTER 4N - HISTORIC SITES REGULATIONS

#### SECTION .0100 - HISTORIC SITES

##### .0102 ACTIVITIES PROHIBITED ON STATE HISTORIC SITES PROPERTY

(a) On state historic sites property, a person may not, unless specifically authorized to do so by written permit or work order from the Department of Cultural Resources:

- (1) remove, deface, or destroy any natural feature, plant, animal, mineral, or human-made object;
- (2) dig, plow, or otherwise disturb existing ground conditions;
- (3) drive or park a vehicle in places other than a designated public roadway or parking area;

- (4) allow an animal under his care to be unrestrained or to enter a site building or historic feature, unless that animal is a guide dog for a legally blind person;
  - (5) ride or drive an animal in places other than a designated public roadway;
  - (6) enter, leave, or remain on site property at any time other than normal hours of public visitation. The schedule for public visitation is posted at each site; variations from this schedule are announced via print and broadcast media;
  - (7) advertise, promote, offer for sale, or otherwise solicit for a product, service, candidate, charity, or public or private cause;
  - (8) cross any railing, fence, barricade, or marked safety perimeter, or otherwise attempt to defeat the purpose of any security or safety device;
  - (9) carry on his person any firearm, projectile-firing device, explosive or other weapon such weapons may be used in interpretive demonstrations at state historic sites in accordance with "Regulations for Historic Weapons Demonstrations at State Historic Sites." Copies of the regulations are available from the Historic Sites Section;
  - (10) create a fire hazard by having any open flame or burning material inside any building unless the person is in a designated smoking area, or by kindling fires in any place other than designated cooking grills;
  - (11) disrupt the public enjoyment or normal operation of a state historic site by any form of commercial or for-profit activity;
  - (12) bathe, wade, or swim in any waters in any state historic site except at such times and in such places as the Department may designate as swimming areas. In this Rule, "swimming area" means any beach or water area designated by the Department as a place for swimming, wading, or bathing.
- (b) On state historic sites property, a person may not, under any circumstances:
- (1) create any pollution or environmental hazard by improper disposal of trash, garbage, waste water, or other detri-

- mental substance;
- (2) hunt, fish, or otherwise disturb, injure, or destroy wildlife;
- (3) use or carry a metal detector, probe, or any similar instrument used for remotely sensing the presence of objects or features at or below ground level;
- (4) create a fire hazard by improperly discarding burning or smoldering material.

Statutory Authority G.S. 121-4(8); 121-4(9); 143B-62(2)d.

## TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

*Notice* is hereby given in accordance with G.S. 150B-21.2 that the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services intends to adopt and amend rules cited as 10 NCAC 14C .1115 and 10 NCAC 18A .0605.

*The proposed effective date of this action is May 3, 1993.*

*The public hearing will be conducted at 9:00 a.m. on February 16, 1993 at the Albemarle Building, 325 N. Salisbury Street, Room 1112 - 11th Floor Conference Room, Raleigh, N.C. 27603.*

### *Reason for Proposed Action:*

**10 NCAC 14C .1115** - For residents who earn a relatively high level of monthly income, this change would allow the resident and the home to share in the costs of higher rent required by HUD, thus allowing them to remain in the home. Recent advances in vocational programming (supported employment) have resulted in many DD residents of HUD-financed group homes earning substantially greater amounts of money and exceeding the HUD income criterion. HUD then requires a rent supplement. Homes typically have not had resources to pay the full amount of this supplement and were forced to restrict admissions or limit the residents' vocational option. This proposal would result in a sharing of fiscal responsibility for the rent supplement between the resident and the home, and thus make continuity of residential placement more feasible for both. This amendment

is proposed to clarify the Rule with language consistent with that of the Federal regulations.

**10 NCAC 18A .0605** - The proposed Rule will provide notice to the Director of an area program into which a client is either placed by another area program or by the Division. Such notification will not only facilitate continuity of care for the client, but will also provide notice so that the area program into which the client is placed might assess its responsibility for emergency/crisis intervention services or any other services which might require its resources.

*Comment Procedures:* Any interested person may present his comments by oral presentation or by submitting a written statement to Charlotte Tucker, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury St., Raleigh, N.C. 27603. Persons wishing to make oral presentations should contact Charlotte Tucker at the above address by February 15, 1993. Time limits for oral remarks may be imposed by the Division Director. Written comments must state the rules to which the comments are addressed and be received in this office by February 15, 1993. Fiscal information on these Rules is available upon request.

## CHAPTER 14 - MENTAL HEALTH: GENERAL

### SUBCHAPTER 14C - GENERAL RULES

#### SECTION .1100 - STATE AND FEDERAL FUNDS ADMINISTERED

##### **.1115 FUNDING GROUP HOMES FOR DEVELOPMENTALLY DISABLED ADULTS**

(a) Pursuant to G.S. 122C-141, the Division shall administer a program of grants to area programs to be called funds for group homes for developmentally disabled adults.

(b) Such grants shall be used to support group homes for developmentally disabled adults.

(c) Adults in whose behalf funds are administered to programs shall be:

- (1) 18 years of age and older; and
- (2) residents of North Carolina.

(d) To be eligible for funds for group homes for developmentally disabled adults, the community shall provide residents with a total array of services and programs to meet their various needs and

levels of capability and not just 24-hour care. These programs shall promote a complete life for these individuals in a community setting.

(e) Funds for group homes for developmentally disabled adults shall be administered to area programs as direct grants and do not require local matching.

(f) Programs may spend funds for group homes for developmentally disabled adults for the following:

- (1) renting or leasing facilities;
- (2) furniture or specialized equipment for residents;
- (3) transportation of residents;
- (4) other necessary operating expenses as approved by the Division; and
- (5) the purchase, construction or alteration, improvement or repair of a facility by the area program or a non-profit board with division approval with the exception of programs participating in federal Department of Housing and Urban Development (HUD) Section 202 projects which shall follow the requirements specified in (f)(6) of this Rule. The program shall meet the following requirements:

(A) The Group Home Mortgage Payment Program. The Division may participate in the mortgage payment program contingent upon the availability of State funds.

(B) The Group Home Purchase/Construction Program.

- (i) The Division may participate in the down payment or lump sum purchase or construction of a group home in whole or part contingent upon the availability of State funds.
- (ii) The area program or non-profit board shall secure two property appraisals for review and approval by the Division prior to purchase.
- (iii) If a new construction grant is requested, the area program shall submit two construction bid contracts from two building contractors to the appropriate regional office for review and approval prior to construction bid letting.

(C) A request for initial renovation of a newly acquired facility of five thousand dollars (\$5,000) or less shall be submitted to the appropriate regional

office of the Division for approval. Initial minor repairs to facilities of less than one thousand dollars (\$1,000) shall be approved by the area program.

(D) A request for alteration or improvement of an existing facility in excess of five thousand dollars (\$5,000) shall be forwarded to the Division Director's office through the appropriate regional office of the Division for approval.

(E) Each request as outlined in Parts (f)(5)(B), (C) and (D) of this Rule shall be accompanied by a narrative that explains the need for the purchase, construction or alteration, improvement or repair of the facility and a copy of the schematic drawings and specifications. If approved by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services, these drawings and specifications shall be forwarded to the Division of Facility Services for review and approval.

(F) If the group home is operated by a non-profit board, the area program shall sign a contract with the private non-profit agency for either the mortgage payments to be made or the purchase or construction program as indicated in (A) and (B) of (f)(5) of this Rule. A copy of the appropriate contract shall be obtained from the controller's office of the central office of the Division.

(G) If a facility owned by an area program or its private non-profit contract agency was purchased, altered, improved, or rehabilitated using division funds and later ceases to be used in the delivery of services to clients, the facility may be sold at the current fair market value or retained, and the area program or its private non-profit contract agency shall reimburse the Division according to the following requirements:

- (i) The current fair market value, acceptable to the Division, shall be determined by two independent appraisals submitted and used as guidance.
- (ii) Reimbursement shall be a pro rata

- share of the accepted value, based on the contribution made by the Division in the purchase, construction or alteration, improvement or repair of the facility.
- (iii) The area program shall maintain a record which reflects the amount of contribution made by the State for purchase, construction or alteration, improvement or repair to the facility:
- (6) to participate in a federal Department of Housing and Urban Development (HUD) Section 202 project (12 U.S.C. §1701q) for the purchase, construction or alteration, improvement or repair of a group home with division approval. The program shall meet the following requirements:
  - (A) The area program may request funds for this project from the Division. The Division may participate in the HUD Section 202 project contingent upon the availability of State funds.
  - (B) The area program shall sign a contract with a private non-profit agency to specify that if the group home ceases to be used in the delivery of services to the clients, the facility may be sold at the current fair market value or retained, and the private non-profit agency shall reimburse the Division according to the following requirements:
    - (i) The current fair market value, acceptable to the Division, shall be determined by two independent appraisals submitted and used as guidance.
    - (ii) Reimbursement shall be a pro rata share of the accepted value, based on the contribution made by the Division in the purchase, construction or alteration, improvement or repair of the facility.
  - (C) The area program shall maintain a record which reflects the amount of contribution made by the State for purchase, construction or alteration, improvement or repair to the group home.
- (g) Fund Balance.
  - (1) The Division may allow group homes for developmentally disabled adults to maintain a fund balance of no more than 15 percent of the current annual budget for the group home.
  - (2) The 15 percent fund balance shall be generated entirely by non-State funds.
  - (3) The Division may decrease State appropriation to a group home, thereby necessitating the group home to utilize its fund balance, if the State appropriation is required in order to continue operations at another home.
  - (4) The 15 percent fund balance allowed shall be in addition to the amount the Division would allow to remain in the fund balance due to restricted donations.
  - (5) Except for the restricted donations and the 15 percent fund balance, funds for group homes for developmentally disabled adults shall be expended last.
  - (6) An allowance for a fund balance for group homes that are operated by an area program is made in Rule .1125 of this Section.
  - (h) To apply for funds for group homes for developmentally disabled adults, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the Division.
    - (i) Funds for group homes for developmentally disabled adults shall be allocated among the regions of the Division by the Division Director.
    - (j) Based on the approved annual plan and budget request submitted and availability of funds, allocation of funds for group homes for developmentally disabled adults to area programs within each region shall be made by the Division Director or his designee.
    - (k) The monthly rent for clients residing in HUD-financed group homes is determined according to the criteria set forth in HUD Handbook 4350.3, "Occupancy Requirements of Subsidized Multi-Family Housing Programs" (which may be obtained from the Department of Housing and Urban Development, 2306 West Meadowview Road, Greensboro, N. C. 24701) and hereby adopted by reference, including any subsequent amendments and editions. Should the rent for these residents exceed one hundred and fifty dollars (\$150) per month, a room and board rate higher than the established maximum rate, in accordance with the provisions of 10 NCAC 47A .0201, shall be charged. The full rent shall be payable to the project owner of the home. Responsibilities and formula for payment of this

amount are as follows:

- (1) The area program or private non-profit agency operating the home shall pay out of its operating budget, the first one hundred and fifty dollars (\$150) of the HUD-determined rent and 20% of any amount that exceeds the one hundred and fifty dollars (\$150).
- (2) The remaining 80% of the amount that exceeds the one hundred and fifty dollars (\$150) shall be paid by the resident or any other party who assumes responsibility.

~~Clients residing in HUD-financed group homes, whose monthly income exceeds the HUD income criteria set forth in the HUD Handbook 33.50 "OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTI-FAMILY HOUSING PROGRAMS" and hereby adopted by reference including any subsequent amendments and editions, shall be charged a room and board rate higher than the established maximum rate in accordance with the provisions of 10 NCAC 47A .0201. For such residents, the excess rate shall be payable to HUD. Responsibilities and formula for payment of this excess amount are as follows:~~

- ~~(1) The area program or private non-profit agency operating the home shall pay an amount not to exceed the first one hundred fifty dollars (\$150.00) of the excess amount above the HUD allowable maximum rate, and 20 percent of any amount that exceeds the one hundred fifty dollars (\$150.00).~~
- ~~(2) The remaining 80 percent of the excess amount that exceeds the one hundred fifty dollars (\$150.00) shall either be paid by the resident or any other party who assumes the responsibility.~~

*Statutory Authority G.S. 122C-112(a)(6), (11); 122C-141; 122C-147.*

## CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS

### SUBCHAPTER 18A - MONITORING PROCEDURES

#### SECTION .0600 - COMMUNITY RELATIONS

#### .0605 NOTIFICATION PROCEDURES FOR PROVISION OF SERVICES

- (a) If an area program plans to operate or

contract for a service located within the catchment area of another area program, the Director of the area program that plans to operate or contract for the service shall notify the Director of the area program in which the service is to be located prior to the provision of the service.

(b) The notification shall be in writing and shall include the following:

- (1) name of the provider;
- (2) service to be provided; and
- (3) anticipated dates of service.

In the event of an emergency, notification prior to the provision of service may be by telephone with written notification occurring the next working day.

(c) Should a dispute resolution concerning such service as described in Paragraph (a) of this Rule be necessary, the Division Director shall arbitrate an agreement between the respective area programs.

(d) If the Division plans to operate or contract for a service in an area program, the Division Director shall notify the Director of the area program in which the service is to be located, prior to the provision of the service, according to the procedures set forth in Paragraph (b) of this Rule.

*Statutory Authority G.S. 122C-113.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to amend rules cited as 10 NCAC 50B .0201 - .0203, .0301, .0306, .0308, .0313, .0403 and .0406.*

*The proposed effective date of this action is April 1, 1993.*

*The public hearing will be conducted at 1:30 p.m. on February 16, 1993 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, NC 27603.*

*Reason for Proposed Action: Amendment necessary to include application processing requirements and verification requirements in effect since August 1, 1992.*

*Comment Procedures: Written comments con-*

cerning this amendment must be submitted by February 15, 1993 to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603 ATTN: Clarence Ervin, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon request (written) from the same address.

## CHAPTER 50 - MEDICAL ASSISTANCE

### SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

#### SECTION .0200 - APPLICATION PROCESS

##### .0201 ACCEPTANCE OF APPLICATION

(a) A client shall be allowed to apply without delay. Without delay is the same day the client appears at the county department of social services expressing a financial or medical need.

(b) The county department of social services shall not act to discourage any individual from applying for Medicaid. It shall be considered discouragement if any employee of the county department of social services:

- (1) requires or suggests the individual wait to apply until he applies for other benefits or until an application for other benefits has been approved or denied; or
- (2) incorrectly states or suggests the individual is not eligible for Medicaid; or
- (3) gives incorrect or incomplete information about Medicaid programs; or
- (4) requires the individual provide or obtain any information needed to establish eligibility prior to signing an application; or
- (5) any other fact which proves to the satisfaction of the county agency or a hearing officer that the client was discouraged from applying.

(c) The client shall be informed verbally and in writing, that:

- (1) he can apply without delay.
- (2) a decision shall be made concerning his eligibility within 45 calendar days from the date of application for Medicaid, except for M-AD, ~~unless he or a collateral causes the delay.~~ For M-AD the application processing standard shall be 60 calendar days from the date of application. For applications which do not require a disability determination and 90 calendar days for applications which

require a disability determination; or

- (3) he shall receive a written decision concerning his eligibility.

(d) The client shall apply in his county of residence.

(e) The date of the application shall be the date the client or his representative signs the state prescribed application form at the county department of social services in his county of residence under penalty of perjury or the date the signed application is received by mail at the department of social services in his county of residence.

(f) If an individual requests assistance by mail, the letter shall be considered a request for information. Within three workdays following receipt of the request, the county agency shall mail follow-up information to the individual. The county agency shall advise the individual to come to the agency to apply and be interviewed, or if he is unable to come in person, to contact the agency so other arrangements can be made to take his application.

(g) If an individual requests assistance by telephone, he shall be advised to come to the county agency to sign an application and be interviewed; or, if he is unable to come to the agency in person other arrangements shall be made to take his application.

*Authority G.S. 108-43; 108A-54; 42 C.F.R. 435.906; 42 C.F.R. 435.907; 42 C.F.R. 435.911; Alexander v. Flaherty, U.S.D.C., W.D.N.C., File No. C-C-74-183, Consent Order filed 15 December 1989; Alexander v. Flaherty Consent Order filed February 14, 1992.*

##### .0202 INITIAL INTERVIEW

(a) The county department of social services shall conduct an interview with the client or his representative. The client may have any person or persons of his choice participate in the interview. During the interview, the Income Maintenance Caseworker shall explain the application process, the client's rights and responsibilities, the programs of public assistance and the eligibility conditions.

(b) The ~~client~~ applicant shall be advised of his right to ~~choose among the programs~~ apply in more than one program category for which he qualifies and the advantages and disadvantages of the choices shall be explained.

(c) The client shall be informed of the following:

- (1) That information he provides shall be checked for accuracy. The client shall be told what information he shall pro-

vide, and what sources the agency shall contact to check the information. Collateral sources of information shall include knowledgeable individuals, business organizations, public records, and documentary evidence. If the client does not wish necessary collateral contacts to be made, he can withdraw his application. If he denies permission to contact necessary collaterals and all alternative sources of verification, the application shall be denied due to failure to cooperate in establishing eligibility.

- (2) The client has the right to:
  - (A) Receive assistance if found eligible;
  - (B) Be protected against discrimination on the grounds of race, creed, or national origin by Title VI of the Civil Rights Act of 1964. He may appeal such discrimination;
  - (C) If eligible for Medicaid and Medicare Part B, have the monthly premium paid in his behalf under an agreement between the state and SSA;
  - (D) Have any information given to the agency kept in confidence;
  - (E) Appeal, if he believes the agency's action to deny, change, or terminate assistance is incorrect, or his request is not acted on with reasonable promptness;
  - (F) Reapply at any time, if found ineligible;
  - (G) Withdraw from the program at any time;
  - (H) Request the agency's help in obtaining third party information which he is responsible to provide;
  - (I) Be informed of all alternative sources of verification for the information he is responsible to provide.
- (3) The client shall be responsible for the following:
  - (A) Provide the county department, state and federal officials, the necessary sources from which to locate and obtain information needed to determine eligibility;
  - (B) Report to the county department of social services any change in situation that may affect eligibility within five days after it happens. The meaning of fraud shall be explained. The applicant shall be informed that he

may be suspected of fraud if he fails to report a change in situation and that in such situations, he may have to repay assistance received in error and that he may also be tried by the courts for fraud;

- (C) Inform the county department of social services of any persons or organization against whom he has a right to recovery. When he accepts medical assistance, the applicant assigns his rights to third party insurance benefits to the state. He shall be informed that it is a misdemeanor to fail to disclose the identity of any person or organization against whom he has a right to recovery;
- (D) Immediately report to the county department the receipt of an I.D. card which he knows to be erroneous. If he does not report such and uses the I.D. card, he may be required to repay any medical expenses paid in error.

*Authority G.S. 108A-57; 42 C.F.R. 435.908; Alexander v. Flaherty, U.S.D.C., W.D.N.C., File No. C-C-74-183, Consent Order Filed 15 December 1989; Alexander v. Flaherty Consent Order filed February 14, 1992.*

#### **.0203 APPLICATION PROCESSING STANDARDS**

(a) The county department of social services shall comply with the following standards in processing applications:

- (1) ~~Request the client provide~~ Only require information or verification necessary to establish eligibility for assistance;
- (2) ~~Request all information known to be needed within 20 calendar days from the date of application or within five work days of the date the need for new information is known, whichever is later;~~ Make at least two easily understandable requests for all necessary information from the applicant or third party;
- (3) ~~Inform the client in writing, and verbally when possible, of acceptable alternative sources or forms of verification;~~ Allow at least 10 calendar days between the initial request and a follow-up request and at least 10 calendar days between the follow-up request and

denial of the application;

- (4) Inform the client in writing, and verbally when possible, of the right to request help in obtaining information requested from the client. The county department of social services shall not discourage any client from requesting such help;
- (5) ~~Request any information needed to determine disability on the date of the initial interview and forward such information to the Disability Determination Section within five work days of receipt. An application may pend 6 months for verification that the deductible has been met or disability established.~~
- (6) ~~Conduct at least one follow-up contact with the client and third-party sources to obtain requested information by the processing time standard;~~
- (7) ~~Request medical bills needed to meet a deductible within five work days of the date income is verified and the client is found to have a deductible;~~
- (8) ~~Complete all applications which pend beyond the processing time standard within five work days of receiving the last needed information.~~

(b) Except as provided in Subparagraphs (1) through (8) of this Paragraph, the county department of social services shall ~~classify all applications which are not completed by the time standards in Rule .0201 of this Section as overdue with good cause or overdue without good cause. To classify the application as overdue with good cause, the county department of social services shall have case record documentation to establish it complied with all application processing standards for the information still needed to complete the application.~~ shall accept the applicant's statement as verification for all factors of eligibility that have not otherwise been verified when the application is processed:

- (1) Any medical verification;
- (2) Proof a deductible has been met;
- (3) Legal alien status;
- (4) Proof of rebuttal value for motor vehicles, salability of remainder interest, and transfer of assets;
- (5) Proof of designation of liquid assets for burial;
- (6) Proof of legally binding agreement limiting resource availability;
- (7) Proof of valid social security number or application for a social security num-

ber;

- (8) Reserve for adult applicants if the stated reserve exceeds one thousand two hundred dollars (\$1,200) and the applicant has taken no steps to obtain the missing reserve verification;
- (9) Any information which the applicant does not know and for which the applicant cannot give a reasonable verification.

(c) The county department of social services shall ~~mail written notice to the client on the processing deadline if the application has not been completed. The notice shall advise the client of the reason or reasons for the delay and what information is still needed.~~ is responsible for verification of an item of information when:

- (1) A fee must be paid to obtain the verification;
- (2) It is available within the agency;
- (3) The applicant or any assistant unit member must be enumerated;
- (4) The applicant requests assistance;
- (5) The applicant is blind, deaf, mentally ill or retarded, unable to speak English, unable to read and write, housebound, hospitalized, institutionalized, or clearly unable to obtain the requested verification.

*Authority G.S. 108A-54; 42 C.F.R. 435.911; Alexander v. Flaherty, V.S.D.C., W.D.N.C., File No. C-C-74-183, Consent Order Filed 15 December 1989; Alexander v. Flaherty Consent Order filed February 14, 1992.*

#### **.0206 DISPOSITION**

(a) Disposition of the application shall complete the application process and shall consist of one of the following actions:

- (1) Approval of assistance; or
- (2) Denial of assistance; or
- (3) Denial of assistance for ineligible month or months of the certification period and approval for eligible month or months of the certification period; or
- (4) Voluntary withdrawal of the application by the client. The Income Maintenance Caseworker shall not suggest to the client that he withdraw his application and shall explain alternatives to withdrawal. The Income Maintenance Caseworker shall explain the client's right to reapply at anytime.

(b) The county department of social services



shall not deny an application prior to three months from the date of application solely due to the client's failure to provide requested information. With the exception of the information listed in (b) (1) (5) of this Rule, the county agency shall never deny an application solely due to the failure of a third party source to provide information requested by the agency. The client shall be offered the opportunity to provide a declaration in lieu of a third party verification for missing information except in the following instances:

- (1) To establish disability or incapacity It is established the applicant will not be able to meet the deductible; or
- (2) To establish medical bills to meet a deductible; or The applicant cannot be located; or
- (3) To verify alien status On or after the 45th day propose denial with a 30 day suspense period before denial becomes final when the applicant has no contact with the agency, provides no information and has not requested help.
- (4) To comply with Social Security enumeration; or
- (5) To establish proof of rebutted value of a resource or existence of a legally binding agreement affecting resource ownership.

Authority G.S. 108A-54; 42 C.F.R. 435.912; 42 C.F.R. 435.913; Alexander v. Flaherty, U.S.D.C., W.D.N.C., File No. C-C-74-183, Consent Order filed 15 December 1989.

## SECTION .0300 - CONDITIONS FOR ELIGIBILITY

### .0301 AGE

(a) Pregnant women and caretaker relatives shall have no age requirement to be eligible for Medicaid.

(b) Other individuals shall meet one of the following age requirements to qualify for Medicaid:

- (1) Age 65 and above as an aged individual; or
- (2) Under age 65 as a disabled individual; or
- (3) Under age 21.

(e) ~~The client's age shall be verified by viewing documentary evidence. If documentary evidence has not been obtained by the end of the application processing time standard, the client's age shall be presumed to be the age he has alleged unless other~~

~~documentation conflicts. The county agency shall continue efforts to obtain documentary evidence.~~

(c) ~~(d)~~ The anniversary of birth shall be the method for determining when an age is reached.

(d) ~~(e)~~ July 1 shall be the date of birth when the year, but not the date of birth is known.

Authority G.S. 108A-54; 42 C.F.R. 435.520; Alexander v. Flaherty Consent Order filed February 14, 1992.

### .0306 DISABILITY

(a) Individuals eligible for Medicaid in December 1973 as disabled individuals and who meet conditions required by 42 CFR 435.133 shall be permanently and totally disabled based on a physical or mental impairment which substantially precludes him from obtaining gainful employment, and such impairment appears reasonably certain to continue without substantial improvement throughout his life time.

(b) Any client who has applied for Medicaid since January 1, 1974 on the basis of disability shall be found disabled under the definition of disability and procedures established for evaluation of vocational and medical factors under the supplemental security income program.

(e) ~~A client shall be responsible for providing a medical report to establish disability if he has a current treating source. If the client does not have a current treating source, the Income Maintenance Caseworker shall have the client sign a consent form and Disability Determination section shall obtain medical information.~~

(c) ~~(d)~~ A social history on a form prescribed by the state shall be completed by the Income Maintenance Caseworker and submitted to the Disability Determination Section with the request for disability determination.

(d) ~~(e)~~ Except for client's receiving social security or supplemental security income on the basis of disability, the decision on disability is made by the Disability Determination Section of the Division of Social Services.

(e) ~~(f)~~ Social Security Administration (SSA) decisions made for social security disability or supplemental security income shall be adopted for persons applying for Medicaid.

(f) ~~(g)~~ Disability determination shall be verified from the client's award letter, SDX, BENDEX, Disability Determination Section approval, Administrative Law Judge decision or other documentary evidence.

(g) ~~(h)~~ Disability for purposes of Medicaid eligibility shall cease when the client is determined

by the Social Security Administration or the Disability Determination Section to be capable of engaging in substantial gainful activity. The client may appeal the termination of Medicaid based on his disability cessation.

*Authority G.S. 108A-54; 42 C.F.R. 435.540; 42 C.F.R. 435.541; Alexander v. Flaherty Consent Order filed February 14, 1992.*

### .0308 CARETAKER RELATIVE

(a) To qualify for Medicaid as a caretaker relative the individual shall be the natural or adoptive parent or the specified relative living in the household with the child if the caretaker is:

- (1) Pregnant with no other dependent children in her care, or
- (2) Related to an eligible child, who is deprived as described in Rule .0305 of this Subchapter, and
- (3) Provide day to day care and supervision for the child.

~~(b) Verification of relationship to the eligible child is established by Rule .0304 of this Section.~~

~~(b) (e)~~ Pregnancy shall be medically verified and the length of pregnancy and expected delivery date indicated on the medical statement.

*Authority G.S. 108A-54; 42 C.F.R. 435.310.*

### .0313 INCOME

(a) Income from the following sources shall be counted in the calculation of financial eligibility:

- (1) Unearned.
  - (A) RSDI.
  - (B) Veteran's Administration.
  - (C) Railroad Retirement.
  - (D) Pensions or retirement benefits.
  - (E) Workmen's Compensation.
  - (F) Unemployment Compensation.
  - (G) Support Payments.
  - (H) Contributions.
  - (I) Dividends or interest from stocks, bonds, and other investments.
  - (J) Trust fund income.
  - (K) Private disability or employment compensation.
  - (L) That portion of educational loans, grants, and scholarships for maintenance.
  - (M) Work release.
  - (N) Lump sum payments.
  - (O) Military allotments.
  - (P) Brown Lung Benefits.
  - (Q) Black Lung Benefits.

- (R) Trade Adjustment benefits.
- (S) SSI when the client is in long term care.
- (T) VA Aid and Attendance when the client is in long term care.
- (U) Foster Care Board payments in excess of state maximum rates for M-AF clients who serve as foster parents.
- (V) Income allocated from an institutionalized spouse to the client who is the community spouse as stated in 42 U.S.C. 1396r-5(d).
- (W) Income allowed from an institutionalized spouse to the client who is a dependent family member as stated in 42 U.S.C. 1396r-5(d).
- (X) Sheltered Workshop Income.
- (Y) Loans if repayment of a loan and not counted in reserve.
- (Z) Income deemed to Family and Children's clients.

- (2) Earned Income.
  - (A) Income from wages, salaries, and commissions.
  - (B) Farm Income.
  - (C) Small business income including self-employment.
  - (D) Rental income.
  - (E) Income from roomers and boarders.
  - (F) Earned income of a child client who is a part-time student and a full-time employee.
  - (G) Supplemental payments in excess of state maximum rates for Foster Care Board payments paid by the county to Family and Children's clients who serve as foster parents.
  - (H) Earned income tax credits for the Aged, Blind or Disabled only.
  - (I) VA Aid and Attendance paid to a budget unit member who provides the aid and attendance.
- (3) Additional sources of income not listed in (1) or (2) of this Rule will be considered available unless specifically excluded by (b) of this Rule, or by regulation or law.

(b) Income from the following sources shall not be counted in the calculation of financial eligibility:

- (1) Earned income of a child who is a part-time student but is not a full-time employee;
- (2) Earned income of a child who is a full-time student;

- (3) Incentive payments and training allowances made to WIN training participants;
- (4) Payments for supportive services or reimbursement of out-of-pocket expenses made to volunteers serving as VIS-TA volunteers, foster grandparents, senior health aides, senior companions, Service Corps of Retired Executives, Active Corps of Executives, Retired Senior Volunteer Programs, Action Cooperative Volunteer Program, University Year for Action Program, and other programs under Titles I, II, and III of Public Law 93-113;
- (5) Foster Care Board payments equal to or below the state maximum rates for Family and Children's clients who serve as foster parents;
- (6) Earnings of M-AABD clients who are participating in ADAP (Adult Developmental Activity Program) training programs for a specified period;
- (7) Income that is unpredictable, i.e., unplanned and arising only from time to time. Examples include occasional yard work, sporadic babysitting, etc.;
- (8) Relocation payments;
- (9) Value of the coupon allotment under the Food Stamp Program;
- (10) Food (vegetables, dairy products, and meat) grown by or given to a member of the household. If home grown produce is sold, count as earned income;
- (11) Benefits received from the Nutrition Program for the Elderly;
- (12) Food Assistance under the Child Nutrition Act and National School Lunch Act;
- (13) Assistance provided in cash or in kind under any governmental, civic, or charitable organization whose purpose is to provide social services or vocational rehabilitation. This includes V.R. incentive payments for training, education and allowance for dependents, grants for tuition, chore services under Title XX of the Social Security Act, VA aid and attendance or aid to the home bound if the individual is in a private living arrangement;
- (14) Loans or grants such as the GI Bill, civic, honorary and fraternal club scholarships, loans, or scholarships granted from private donations to the college, etc., except for any portion used or designated for maintenance;
- (15) Loans, grants, or scholarships to undergraduates for educational purposes made or insured under any program administered by the U.S. Department of Education;
- (16) Benefits received under Title VII of the Older Americans Act of 1965;
- (17) Payments received under the Experimental Housing Allowance Program (EHAP);
- (18) In-kind shelter and utility contributions paid directly to the supplier. For Family and Children's cases, shelter, utilities, or household furnishings made available to the client at no cost;
- (19) Food/clothing contributions in Family and Children's cases (except for food allowance for persons temporarily absent in medical facilities up to 12 months);
- (20) Income of a child under 21 in the budget unit who is participating in JTPA and is receiving as a child;
- (21) Housing Improvement Grants approved by the N.C. Commission of Indian Affairs or funds distributed per capital or held in trust for Indian tribe members under P.L. 92-254, P.L. 93-134 or P.L. 94-540;
- (22) Payments to Indian tribe members as permitted under P.L. 94-114;
- (23) Payments made by Medicare to a home renal dialysis patient as medical benefits;
- (24) SSI except for individuals in long term care;
- (25) HUD Section 8 benefits when paid directly to the supplier or jointly to the supplier and client;
- (26) Benefits received by a client who is a representative payee for another individual who is incompetent or incapable of handling his affairs. Such benefits must be accounted for separate from the payee's own income and resources;
- (27) Special one time payments such as energy, weatherization assistance, or disaster assistance that is not designated as medical;
- (28) The value of the U.S. Department of Agriculture donated foods (surplus commodities);
- (29) Payments under the Alaska Native

Claims Settlement Act, Public Law 92-203;

- (30) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (31) HUD Community Development Block Grant funds received to finance the renovation of a privately owned residence;
- (32) Reimbursement for transportation expenses incurred as a result of participation in the Community Work Experience Program or for use of client's own vehicle to obtain medical care or treatment;
- (33) Adoption assistance;
- (34) Incentive payments made to a client participating in a vocational rehabilitation program;
- (35) Title XX funds received to pay for services rendered by another individual or agency;
- (36) Any amount received as a refund of taxes paid;

(A) For M-AABD categorically needy clients who meet the criteria in (B) below, the amount of increase in RSDI resulting from elimination of the actuarial reduction factor in calculating the amount of RSDI they received in January 1984 plus the amount of all subsequent RSDI cost-of-living increases. This income ceases to be counted up to three months prior to the date the individual applies to have it not counted, provided he meets the criteria in (B) below.

(B) For the RSDI increases specified in (A) above not to be counted, the client must:

- (i) Have lost SSI eligibility effective January 1984 due to an RSDI increase caused by elimination of the actuarial reduction factor.
- (ii) Would currently be eligible for SSI if the increase in RSDI specified in (i) and all subsequent RSDI cost-of-living increases were deducted, and
- (iii) No later than June 30, 1987, have applied to have these increases not counted.

~~(e) Verification of the receipt and amount of the income shall be made through documentary evi-~~

~~dence provided by the client or from the source of the income.~~

(c) ~~(d)~~ Income levels for purposes of establishing financial eligibility are those amounts approved by the N.C. General Assembly and stated in the Appropriations Act for categorically needy and medically needy classifications, except for the following:

- (1) The income level shall be reduced by one-third when an aged, blind or disabled individual lives in the household of another person and does not pay his proportionate share of household expenses. The one-third reduction shall not apply to children under nineteen years of age who live in the home of their parents;
- (2) An individual living in a long term care facility or other medical institution shall be allowed a thirty dollar (\$30.00) income level, and a couple in the same room in a long term care facility shall be allowed a sixty dollar (\$60.00) income level;
- (3) Individuals who are in a long term care facility for a temporary period of six months or less shall be allowed the income level provided by statute in addition to the thirty dollar (\$30.00) level.

*Authority G.S. 108A-25(b); 108A-61; 42 C.F.R. 435.135; 42 C.F.R. 435.731; 42 C.F.R. 435.732; 42 C.F.R. 435.733; 42 C.F.R. 435.811; 42 C.F.R. 435.812; 42 C.F.R. 435.831; 42 C.F.R. 435.832; 42 C.F.R. 435.1007; 45 C.F.R. 233.20; P.L. 99-272; Section 12202; Alexander v. Flaherty Consent Order filed February 14, 1992; 42 U.S.C. 1383c(b); 42 U.S.C. 1383(c)(d).*

## SECTION .0400 - BUDGETING PRINCIPALS

### .0403 RESERVE

(a) The value of resources held by the client or by a financially responsible person shall be considered available to the client in determining countable reserve for the budget unit.

(b) Jointly owned resources shall be counted as follows:

- (1) The value of resources owned jointly with a non-financially responsible person who is a recipient of another public assistance budget unit shall be divided equally between the budget units;

- (2) The value of liquid assets and personal property owned jointly with a non-financially responsible person who is not a client of another public assistance budget unit shall be available to the budget unit member if he can dispose of the resource without the consent and participation of the other owner or the other owner consents to and, if necessary, participates in the disposal of the resource;
- (3) The client's share of the value of real property owned jointly with a non-financially responsible person who is not a member of another public assistance budget unit shall be available to the budget unit member if he can dispose of his share of the resource without the consent and participation of the other owner or the other owner consents to and, if necessary, participates in the disposal of the resource.

(c) The terms of a separation agreement, divorce decree, will, deed or other legally binding agreement or legally binding order shall take precedence over ownership of resources as stated in (a) and (b) of this Rule.

(d) The reserve limit for the budget unit for aged, blind or disabled cases shall be determined as follows:

- (1) The reserve limit for two persons shall be allowed when spouses live together in a private living situation or when the couple share the same room in long term care;
- (2) Allow the reserve limit for one person for the Community Alternative Program (CAP) client with a spouse at home and only count the resources that are available to the CAP client in determining his countable reserve;
- (3) The reserve limit for one person is allowed for the client who is in long term care and the spouse remains in the home;
- (4) The reserve allowance for one person is allowed for the client who is in long term care and the spouse is in domiciliary care;
- (5) The reserve limit allowed for a blind or disabled minor child who lives with his parent or parents or is temporarily absent includes the child and the parent or parents with whom the child lives;
- (6) The reserve limit allowed for a blind or

disabled dependent child under age 19 who is in long term care shall include only the child if his care and treatment are expected to exceed 12 months, as certified by the child's physician.

(e) Countable resources for Family and Children's related cases will be determined as follows:

- (1) The resources of a spouse, who is not a stepparent, shall be counted in the budget unit's reserve allowance if the spouses live together or one spouse is temporarily absent in long term care and the spouse is not a member of another public assistance budget unit;
- (2) The resources of a client and a financially responsible parent or parents shall be counted in the budget unit's reserve limit if the parents live together or one parent is temporarily absent in long term care and the parent is not a member of another public assistance budget unit;
- (3) The resources of the parent or parents shall not be considered if a child under age 21 requires care and treatment in a medical institution and his physician certifies that the care and treatment are expected to exceed 12 months.

(f) The homesite shall be excluded from countable resources when it is the principal place of residence for the client. The homesite is defined as the house and lot, plus all buildings on the lot, in the city or the house and the land the house is on, to a maximum of one acre, plus all buildings on the acre, in a rural area.

- (1) For all aged, blind or disabled cases and medically needy families and children related cases, in addition to the principal place of residence, the homesite shall include real property contiguous to the home with a tax value of less than twelve thousand dollars (\$12,000).
- (2) For all aged, blind or disabled cases the equity in the homesite shall be excluded when the client is in long term care and his spouse, minor children or adult disabled children remain in the home or a physician has certified in writing that the client will return home within six months from the date of entry into the hospital or long term care facility.

(g) For categorically needy aged, blind or disabled cases without grandfathered protection, nonhome property and personal property that is

income producing shall be excluded from resources when the budget unit's equity in the property does not exceed six thousand dollars (\$6,000) and the property produces a net annual return of at least six percent of the excludable equity value for each income producing activity.

(h) For medically needy Families and Children cases and medically needy aged, blind or disabled cases without grandfathered protection, if the client or any member of the budget unit has ownership in a probated estate, the value of the individual's proportionate share of the countable property shall be a countable resource unless the property can be excluded as the homesite or as income producing property, as stated in (e) and (f) of this Rule.

(i) The equity in non-excluded real property shall be counted toward the reserve level of the budget unit.

(j) A motor vehicle shall be determined an essential vehicle as follows:

- (1) For aged, blind or disabled individuals with grandfathered protection, if public transportation cannot be used because it is not available or because of his physical or mental condition and the vehicle is needed to:
  - (A) Obtain regular medical treatment, or
  - (B) Retain employment, or
  - (C) Go shopping if the shopping area is more than one-half mile from the client's home, or
  - (D) Go shopping if the client is responsible for shopping and is physically limited from walking one-half mile, or
  - (E) Transport children to and from school and the school is not within reasonable walking distance;
- (2) For aged, blind or disabled cases without grandfathered protection and medically needy Family and Children's related cases, a vehicle must be specially equipped for use by a handicapped individual, used to obtain regular medical treatment, or used to retain employment.

(k) ~~The value of non-excluded motor vehicles will be determined by the average wholesale value listed in the Red Book. If the vehicle is not listed in the Red Book, the value will be determined by knowledgeable sources. If the client disagrees with the Red Book value he may obtain an appraisal at his own expense based on Part 5—Supplemental Security Income Manual. is the Current Market Value, less encumbrances. If the appli-~~

cant/recipient disagrees with the assigned value, he has the right to rebut the value.

(l) The current market value of a remainder interest in life estate shall be determined by applying the remainder interest percentage from the chart in the Medicaid Eligibility Manual to the tax value of the property. A lower current market value for remainder interest may be established by offering the interest for sale and the highest offer received, if any, is less than the value determined by application of the values chart to the tax value.

(m) For all aged, blind or disabled cases, up to one thousand five hundred dollars (\$1,500) may be excluded from countable resources for the client and his spouse under the burial exclusion. Apply the one thousand five hundred dollar (\$1,500) burial exclusion for each individual separately. Only the following resources may be excluded and they must be excluded in the following order:

- (1) Irrevocable pre-need burial contracts, burial trusts, or other irrevocable arrangements established for burial expenses;
- (2) Face value of life insurance policies that accrue cash value when the total face value of all policies for the budget unit is one thousand five hundred dollars (\$1,500) or less and the cash value was not counted in reserve;
- (3) Revocable burial contracts or trusts established for burial expenses. Any excess remains a countable resource;
- (4) Cash value of life insurance that has been designated for burial expenses if the cash value was considered in determining countable reserve. Any cash value in excess of one thousand five hundred dollars (\$1,500) remains a countable resource.

(n) For all aged, blind or disabled cases and medically needy Family and Children's related cases, the value of trust funds established for the client or for any member of the budget unit is a countable resource unless it is determined by the courts that the funds are not available for the beneficiary of the trust.

(o) For an institutionalized individual, the availability of resources are determined in accordance with 42 U.S.C. 1396r-5. Resources of the community spouse are not counted for the institutionalized spouse when:

- (1) Resources of the community spouse cannot be determined or cannot be made available to the institutionalized spouse because the community spouse

cannot be located; or

- (2) The couple has been continuously separated for 12 months at the time the institutionalized spouse enters the institution.

*Authority G.S. 108A-54; 108A-55; 143-127.1(d); S.L. 1983, c. 1116; 42 U.S.C. 1396r-5; 42 C.F.R. 435.602; 42 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.723; 42 C.F.R. 435.734; 42 C.F.R. 435.821; 42 C.F.R. 435.822; 42 C.F.R. 435.823; 42 C.F.R. 435.845; 45 C.F.R. 233.20; 45 C.F.R. 233.51; Deficit Reduction Act of 1984 (P.L. 98-369), Section 2373; 42 U.S.C. 1396a(a)(17); 42 U.S.C. 1396a(a)51; Schweiker v. Gray Panthers, 453 U.S. 34, 101 S. Ct. 2633, 69 L. Ed.2d 460 (1981).*

#### .0406 DEDUCTIBLE

(a) Deductible shall apply to clients living in the community in private living quarters or residential group facilities, except that a client in long term care who is expected to return to his home within six months retains his private living status.

(b) The client or his representative shall be responsible for providing bills, receipts, insurance benefit statements or Medicare EOB to establish incurred medical expenses and his responsibility for payment. If the client has no representative and he is physically or mentally incapable of accepting this responsibility, the county shall assist him.

(c) Expenses shall be applied to the deductible when they meet the following criteria:

- (1) The expenses are for medical care or service recognized under state or federal tax law;
- (2) They are incurred by a budget unit member;
- (3) They are incurred:
  - (A) During the certification period for which eligibility is being determined and the requirements of Paragraph (d) of this Rule are met; or
  - (B) Prior to the certification period and the requirements of Paragraph (e) of this Rule are met.

(d) Medical expenses incurred during the certification period shall be applied to the deductible if the requirements in Paragraph (c) of this Rule are met and:

- (1) The expenses are not subject to payment by any third party including insurance, government agency or program except when such program is entirely

funded by state or local government funds, or private source; or

- (2) The private insurance has not paid such expenses by the end of the application time standard; or
- (3) For certified cases, the insurance has not paid by the time that incurred expenses equal the deductible amount; or
- (4) The third party has paid and the client is responsible for a portion of the charges.

(e) The unpaid balance of a Medical expense incurred prior to the certification period shall be applied to the deductible if the requirements in Paragraph (c) of this Rule are met and:

- (1) The medical expense was:
  - (A) Incurred within 24 months immediately prior to:
    - (i) The month of application for prospective or retroactive certification period or both; or
    - (ii) The first month of any subsequent certification period; or
  - (B) Incurred prior to the period described in Subparagraph (e)(1)(A) of this Rule; and a payment was made on the bill during that period; and

- (2) The medical expense:
  - (A) Is a current liability;
  - (B) Has not been applied to a previously met deductible; and
  - (C) Insurance has paid any amount of the expense covered by the insurance.

(f) Incurred expenses shall be applied to the deductible in the order in which they are incurred by calendar date except that expenses remaining after insurance payments for lump sum charges shall be computed by:

- (1) Determining average daily charge excluding discharge date from hospital; and
- (2) Determining average daily insurance payment for the same number of days; and
- (3) Subtracting average daily insurance payment from the average daily charge to establish client's daily responsibility.

~~(g) If evidence of incurred medical expenses is not provided within the time standards allowed by the Alexander v. Flaherty consent order, filed December 15, 1989, or the end of the certification period, the case shall be denied eligibility.~~

(g) ~~(h)~~ Eligibility shall begin on the day that incurred medical expenses prove the deductible is met, except that the client shall be financially

liable for that portion of his medical expenses incurred on the first day of eligibility which are applied to the balance of the deductible. Notice of the deductible balance shall be sent to the hospital if the client was hospitalized on the date deductible is met.

(h) ~~(h)~~ The receipt of proof of medical expenses and other verification shall be documented in the case record.

*Authority G.S. 108A-54; 42 C.F.R. 435.732; 42 C.F.R. 435.831; Alexander v. Flaherty, USDC, WDNC, File Number C-C-74-483; Alexander v. Flaherty Consent Order filed February 14, 1992.*

## TITLE 11 - DEPARTMENT OF INSURANCE

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rules cited as 11 NCAC 4 .0418 - .0419, .0421, .0423, .0428; repeal rule cited as 11 NCAC 4 .0424; and adopt rule cited as 11 NCAC 4 .0431.*

*The proposed effective date of this action is April 1, 1993.*

*The public hearing will be conducted at 10:00 a.m. on February 1, 1993 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.*

*Reason for Proposed Action: To keep current with insurance industry practices and to afford consumers better protection in dealing with agents and insurers; and to comport with recodification of Chapter 58.*

*Comment Procedures: Written comments may be sent to Bill Stevens, Consumer Division, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Bill Stevens at (919) 733-2004 or Ellen Sprengel at (919) 733-4529.*

## CHAPTER 4 - CONSUMER SERVICES DIVISION

### SECTION .0400 - PROPERTY AND LIABILITY

#### .0418 TOTAL LOSSES ON MOTOR VEHICLES

The commissioner shall consider as prima facie violative of G.S. ~~58-54.4(11)~~ 58-63-15(11) the failure by an insurer to adhere to the following procedures concerning settlement of covered "total loss" motor vehicle claims when such failure is so frequent as to indicate a general business practice:

- (1) If the insurer and the claimant are initially unable to reach an agreement as to the value of the vehicle, the insurer shall base any further settlement offer not only on published regional average values of similar vehicles, but also on the value of the vehicle in the local market. Local market value shall be determined by using either the local market price of a comparable vehicle or, if no comparable vehicle can be found, quotations from at least two qualified dealers within the local market area. Additionally, if the claimant represents that the vehicle actually owned by him was in better than average condition, the insurer shall give due consideration to the condition of the claimant's vehicle prior to the accident.
- (2) Where the insurer has the right to elect to replace the vehicle and does so elect, the replacement vehicle shall be available without delay, similar to the lost vehicle, and paid for by the insurer, subject only to the deductible and to the value of any enhancements acceptable to the insured.
- (3) If the insurer makes a deduction for the salvage value of a "total loss" vehicle retained by the claimant, the insurer, if so requested by the claimant, shall furnish the claimant with the name and address of a salvage dealer who will purchase the salvage for the amount deducted. ~~The insurer shall be responsible for all reasonable towing and storage charges until three days after the owner and storage facility are notified in writing that the insurer will no longer reimburse the owner or storage facility for storage charges. Notification to the owner shall include the name, address and telephone number of the facility where the vehicle is being stored. Notification to the storage facility shall include the name, address and telephone number of the owner. No insurer shall abandon the salvage of a motor vehicle to a towing and/or storage service without the agreed per-~~



~~mission of the service involved. In instances where the towing and storage charges are paid to the owner, the check or draft for the amount of such charges shall be payable jointly to the owner and the towing/storage service.~~

- (4) If a written statement is requested by the claimant, a total loss payment by an insurer shall be accompanied by a written statement listing the estimates, evaluations and deductions used in calculating the payment, if any, and the source of these values.
- (5) When a motor vehicle is damaged in an amount which, inclusive of original and supplemental claims, equals or exceeds 75 percent of the preaccident actual cash value, as such value is determined in accordance with this Rule, an insurance carrier shall "total loss" the automobile by paying the insured claimant the preaccident value, and in return, receiving possession of the legal title of the salvage of said automobile. At the election of the insured claimant, or in those circumstances where the insurance carrier will be unable to obtain an unencumbered title to the damaged vehicle then the insurance carrier shall have the right to deduct the value of the salvage of the total loss from the actual value of the vehicle and leave such salvage with the insured claimant subject to the insurance carrier abiding by ~~Subparagraph~~ Subparagraphs (3) and (6) of this Regulation Rule. No insurer, adjuster, appraiser, agent, or any other person shall enter into any oral or written agreement(s), by and between themselves, to limit any original or supplemental claim(s) so as to artificially keep the repair cost of a damaged vehicle below 75% of its preaccident value, if in fact such original and any supplemental claim(s) exceed or would exceed 75% of the vehicle's preaccident value.
- (6) The insurer shall be responsible for all reasonable towing and storage charges until three days after the owner and storage facility are notified in writing that the insurer will no longer reimburse the owner or storage facility for storage charges. Notification to the owner shall include the name, address, and telephone number of the facility where the vehicle

is being stored. Notification to the storage facility shall include the name, address, and, if available, telephone number of the owner. No insurer shall abandon the salvage of a motor vehicle to a towing or storage service without the consent of the service involved. In instances where the towing and storage charges are paid to the owner, the check or draft for the amount of such service shall be payable jointly to the owner and the towing or storage service.

*Statutory Authority G.S. 58-2-40; 58-63-15.*

#### **.0419 MOTOR VEHICLE REPAIR ESTIMATES**

The commissioner shall consider as prima facie violative of G.S. ~~58-54.4(11)~~ 58-63-15(11) the failure by an insurer to adhere to the following procedures concerning repair estimates on covered motor vehicle damage claims submitted when such failure is so frequent as to indicate a general business practice:

- (1) If the insurer requires the claimant to obtain more than two estimates of property damage, the cost, if any, of such additional estimates shall be borne by the insurer.
- (2) No insurer shall refuse to inspect the damaged vehicle if a personal inspection is requested by the claimant. However, if the damaged vehicle is situated other than where it is normally used or cannot easily be moved, the insurer may satisfy the requirements of this Section by having a competent local appraiser inspect the damaged vehicle.
- (3) When the insurer elects to have the claimant's property repaired, the insurer shall, if so requested by the claimant, furnish the claimant with a legible front and back copy of its estimate. This estimate shall contain the name and address of the insurer and, if the estimate was prepared by a repair service, the name and address of that service. If there is a dispute concerning pre-existing damage to the vehicle which the insurer does not intend to have repaired, the extent of such damage shall be clearly stated in the estimate.
- ~~(4) No insurer shall require a claimant to utilize a particular repair service.~~
- ~~(5) No~~ If requested by a claimant, an

insurer shall ~~refuse to~~ provide to the claimant ~~with~~ copies of ~~an~~ the estimate and all ~~supplements thereto that~~ it uses to offer a settlement.

Statutory Authority G.S. 58-2-40; 58-63-15.

#### .0421 HANDLING OF LOSS AND CLAIM PAYMENTS

The commissioner shall consider as prima facie violative of G.S. ~~58-39~~ 58-3-100 and ~~58-54.4(11)~~ 58-63-15(11) failure by an insurer to adhere to the following procedures concerning loss and claim payments when such failure is so frequent as to indicate a general business practice:

- (1) Loss and claim payments shall be mailed or otherwise delivered promptly within 10 business days after the claim is settled.
- (2) Unless the insured consents, no insurer shall deduct from a loss or claim payment made under one policy premiums owed by the insured on another policy.
- (3) No insurer shall withhold the entire amount of a loss or claim payment because the insured owes premium or other monies in an amount less than the loss or claim payment.
- (4) If a release or full payment of claim is executed by ~~an insured or a~~ claimant, involving a repair to a motor vehicle, ~~prior to or at the time of the repair,~~ it shall not bar the right of the claimant to promptly assert a claim for property damages unknown to either the claimant or to the insurance carrier prior to the repair of the vehicle, ~~or a claim for diminished value, which damages were~~ directly caused by the accident and which damages could not be determined or known until after the repair or attempted repair of the motor vehicle. Claims asserted within ~~30 days after repair for diminished value and~~ 30 days after discovery of unknown damage shall be considered promptly asserted.
- (5) If a release or full payment of claim is executed by a third party claimant, involving a repair to a motor vehicle, it shall not bar the right of the third party claimant to promptly assert a claim for diminished value, which diminished value was directly caused by the accident and which diminished value could not be determined or known until after the

repair or attempted repair of the motor vehicle. Claims asserted within 30 days after repair for diminished value shall be considered promptly asserted.

- (6) ~~(5)~~ Except in the total loss situations, the insurer shall be liable to the vehicle owner and others as their legal interest may require, for the full cost of repairs less policy deductibles, depreciation/betterment and ~~repairs made due to~~ prior unrepaired damage on the vehicle. In total loss situations, the insurer shall protect any lienholder's interest, as recorded with the Division of Motor Vehicles, by placing the lienholder's name on the settlement check or draft as co-payee.

Statutory Authority G.S. 58-2-40; 58-3-100; 58-63-15.

#### .0423 ETHICAL STANDARDS

(a) Every agent, limited representative, broker, adjuster, appraiser, or other insurer's representative shall, when in contact with the public:

- (1) promptly identify himself and his occupation;
- (2) carry the license issued to him by the Department of Insurance while performing his duties and display it upon request to any ~~insured or~~ claimant, any repairer at which he is investigating a claim or loss, any department representative, or any other person with whom he has contact while performing his duties;
- (3) conduct himself in such a manner as to inspire confidence by fair and honorable dealings.

(b) No ~~adjuster or appraiser~~ claims management person, agent, agency employee, limited representative, broker, adjuster, appraiser, or other insurer's representative shall:

- (1) ~~recommend the utilization of a particular motor vehicle repair service without clearly informing the claimant that he is under no obligation to use the recommended repair service and may use the service of his choice;~~
- (2) accept any gratuity or other form of remuneration from a ~~repair service~~ any provider of services for recommending that ~~repair service provider~~ to claimants;
- (3) purchase salvage from a claimant; ~~whose claim he is adjusting or apprais-~~

ing without first disclosing to the claimant the nature of his interest in the transaction;

- (3) ~~(4)~~ intimidate or discourage any claimant from seeking legal advice and counsel by withdrawing and reducing a settlement offer previously tendered to the claimant or threatening to do so if the claimant seeks legal advice or counsel. No adjuster shall advise a claimant of the advisability of seeking ~~or not seeking~~ legal counsel nor shall recommend any legal counsel to any claimant under any circumstance; ;

- (4) cause any undue delay in the settlement of a property damage claim on account of the claimant's choice of a motor vehicle repair service.

(c) No claims management person, agent, agency employee, limited representative, broker, or other insurer's representative shall recommend the utilization of a particular motor vehicle repair service without clearly informing the claimant that he is under no obligation to use the recommended repair service and that he may use the service of his choice.

Statutory Authority G.S. 58-2-40; 58-33-10; 58-33-25; 58-33-30; 58-35-25; 58-63-15; 58-65-40.

#### **.0424 PURPOSE**

The purpose of this Rule is to set forth standards for prompt, fair, and equitable settlements of motor vehicle insurance claims with regard to the use of after market parts.

Statutory Authority G.S. 58-9.

#### **.0428 ENFORCEMENT**

Violations of ~~this Section which~~ 11 NCAC 4 .0425 through 11 NCAC 4 .0427 that are so frequent as to indicate a general business practice shall be deemed by the Commissioner to be an unfair trade practice under Article ~~3A~~ 63 of General Statute Chapter 58.

Statutory Authority G.S. 58-9.

#### **.0431 DEFINITION OF CLAIMANT**

As used in this Section, unless the context clearly indicates otherwise, "claimant" means a first party claimant or a third party claimant.

Statutory Authority G.S. 58-2-40(1); 58-3-100(5);

58-63-15.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rules cited as 11 NCAC 11A .0102, .0501 - .0503, .0505, .0508, .0510 - .0511, .0513; 11B .0108 - .0110, .0113, .0119, .0131, .0503, .0601 - .0602, .0604, .0607 - .0610, .0612; 11C .0103, .0108 - .0109, .0114, .0117 - .0118, .0128 - .0129, .0403; 11D .0104, .0108 - .0109, .0111 - .0112, .0118, .0145 - .0147, .0159 - .0160, .0303, .0305; 11E .0202, .0303; adopt rules cited as 11 NCAC 11B .0215 - .0223, .0506 - .0518, .0615; 11C .0132, .0206, .0307 - .0317, .0501 - .0503, .0601 - .0605; 11E .0203; 11H .0001 - .0012; and repeal rules cited as 11 NCAC 11A .0101, .0103 - .0104, .0107 - .0108, .0401 - .0407, .0409 - .0432, .0435 - .0449, .0452 - .0457, .0460 - .0493; 11B .0101 - .0103, .0105, .0107, .0116 - .0118, .0121, .0132, .0143, .0202 - .0214, .0402 - .0407, .0501; 11C .0107, .0111, .0115 - .0116, .0121, .0123, .0127, .0202 - .0205, .0302 - .0306; 11D .0105 - .0106, .0113 - .0114, .0202; 11E .0102 - .0105, .0201, .0306 - .0310, .0402 - .0405; 11F .0002 - .0010.*

*The proposed effective date of this action is April 1, 1993.*

*The public hearing will be conducted at 10:00 a.m. on February 5, 1993 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.*

*Reason for Proposed Action: To modernize and improve the rules governing the monitoring of financial affairs of insurance companies.*

*Comment Procedures: Written comments may be sent to Ray Martinez, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Ray Martinez at (919) 733-5633, or Ellen Sprenkel at (919) 733-4529.*

## **CHAPTER 11 - FINANCIAL EVALUATION DIVISION**

### **SUBCHAPTER 11A - GENERAL PROVISIONS**

## SECTION .0100 - DEFINITIONS

### .0101 STATUTORY FINANCIAL STATEMENT

"Statutory Financial Statement" shall mean financial statements prepared in accordance with the requirements of the Association Edition of the Annual Statements approved by the National Association of Insurance Commissioners, the instructions that accompany each such statement, and in accordance with statutory accounting practices including such rules of the Department as are applicable to the preparation or presentation of each such annual statement.

*Statutory Authority G.S. 57-9; 58-9(3); 58-21.*

### .0102 UNSOUND CONDITION

"Unsound Condition" shall mean the existence as used in G.S. 58-3-90 and 58-3-100, means that the state of affairs of any insurance company is such that the Commissioner has determined that its continued operations may be hazardous to its policyholders, creditors, or the general public, after the Commissioner has considered any or all of the standards set forth in G.S. 58-30-60(b), licensed in this state:

- (1) whose financial or operational condition is such that it may be potentially unable to meet its obligations to the policyholders and claimants of this state, or
- (2) has experienced such a substantial loss from operations or reduction in surplus as to render it potentially unable to meet its obligations in this state.

*Statutory Authority G.S. 58-2-40; 58-3-90; 58-3-100; 58-30-60(b).*

### .0103 IMPAIRED INSURER

"Impaired Insurer" shall mean the existence of a company whose admitted assets are less than the aggregated amount of its liabilities and its outstanding capital stock or required minimum surplus, or both.

*Statutory Authority G.S. 58-39(2); 58-77(10).*

### .0104 INSOLVENT INSURER

"Insolvent Insurer" shall mean the existence of a company whose aggregate liabilities, exclusive of capitalization, exceed the admitted assets of the company as determined on the basis of statutory accounting practices. In making the determination of the existence of an insolvent insurer no credit

shall be given to assets not admitted in accordance with statutory accounting practices.

*Statutory Authority G.S. 58-38; 58-155, 2(1).*

### .0107 MORTGAGE GUARANTY INSURANCE

"Mortgage Guaranty Insurance" shall mean insurance of mortgage lenders against loss by reason of nonpayment of mortgage indebtedness by the borrower; and as authorized by G.S. 58-72(17) of the General Statutes of North Carolina.

*Statutory Authority G.S. 58-9(1); 58-72(17).*

### .0108 MISCELLANEOUS INSURER

"Miscellaneous Insurer" shall mean any company licensed in this state and not being a life, fire, casualty, or multiple line insurer. The term miscellaneous insurer includes, but is not limited to, title insurer, reciprocal insurer, fraternal benefit association insurer, hospital services corporation insurer, town and county farm mutual insurer and underwriter insurer.

*Statutory Authority G.S. 58-9.*

## SECTION .0400 - DESCRIPTION OF FORMS

### .0401 APPLICATION FOR ADMISSION TO DO BUSINESS IN NC

The Petition for Application for Admission is part of the application for the initial license of an insurance company to do business in North Carolina. The form includes the company's name; company's address; items required by petition; certain financial data of company and other pertinent information.

*Statutory Authority G.S. 58-150.*

### .0402 POWER OF ATTORNEY FOR SERVICE OF LEGAL PROCESS

The Power of Attorney for Service of Legal Process is part of the application for initial license of an insurance company to do business in North Carolina. The form includes, but is not limited to, a signed statement by officials of the company appointing the Commissioner of Insurance as its true and lawful attorney upon whom processes of law against said corporation in any action or legal proceeding subject to and in accordance with the laws of the State of North Carolina.

*Statutory Authority G.S. 58-150(3); 58-153.*

**.0403 POWER OF ATTORNEY FOR SALE OF SECURITIES**

The Power of Attorney for Sale of Securities is part of the application for the initial license of an insurance company to do business in North Carolina. The form includes a signed statement by officials of the company authorizing the Commissioner of Insurance as lawful attorney to sell and transfer securities on deposit with the Department as far as such sale may be necessary to pay any liability of the company, together with other pertinent information relative thereto.

*Statutory Authority G.S. 58-182.5.*

**.0404 APPLICATION FOR LICENSE: GENERAL**

The Application for License is prepared annually for a renewal license or initial license of an insurance company and is applicable to all insurance companies, domestic and foreign, except hospital and medical service corporations, dental service corporations and fraternal orders. The form includes the company's name, company's address, president and secretary of the company, schedule of fees payable and other pertinent information.

*Statutory Authority G.S. 58-15; 58-63(1); 58-66; 58-72; 105-228.4(a).*

**.0405 APPLICATION FOR LICENSE: HOSPITALS: MEDICAL SERVICE**

This application for license is prepared annually for the renewal license or initial license of hospital and medical service corporations. The form includes the company's name, company's address, president and secretary of the company, a schedule of fees payable and other pertinent information.

*Statutory Authority G.S. 58-15; 58-63; 58-72; 105-228.4(a).*

**.0406 APPLICATION FOR LICENSE: DENTAL SERVICE CORPORATION**

This application for license is prepared annually for the renewal license or initial license of dental service corporations. The form includes the company's name, company's address, president and secretary of the company, a schedule of fees payable and other pertinent information.

*Statutory Authority G.S. 58-15; 58-63; 58-72; 105-228.4(a).*

**.0407 APPLICATIONS FOR LICENSE: FRATERNAL ORDER**

This application for license is prepared annually for the renewal license or initial license of fraternal orders. The form includes the company's name, company's address, president and secretary of the company, a schedule of fees payable and other pertinent information.

*Statutory Authority G.S. 58-15; 58-63; 58-72; 105-228.4(a).*

**.0409 INSURANCE COMPANY LICENSE**

The Insurance Company License is prepared annually and represents the renewal license or initial license of the applicant insurance company. This form is the insurance company's authority to transact business in the State of North Carolina until the expiration of the fiscal year indicated therein. The form includes the company's name, company's address, authorized lines of business and other pertinent information.

*Statutory Authority G.S. 58-15; 58-72; 105-228.4.*

**.0410 DEPOSIT BOND FORM**

The Deposit Bond Form shall be used by fire and casualty companies wishing to file a surety bond in lieu of a deposit of securities. The form shall include the name of the principal, surety, penal sum, obligee, effective date, serial number, terms and conditions of the bond, and other pertinent information.

*Statutory Authority G.S. 58-188.8.*

**.0411 FIRE AND CASUALTY ANNUAL STATEMENT BLANK**

The Fire and Casualty Annual Statement Blank is used by insurance companies for required annual reports to the Commissioner. The form is used by fire and casualty companies and such other companies as may be specified by the Department. The form includes the company's name, company's address, executive officers and board of directors of the company, financial information on the company and its operations, detailed schedules related thereto and other pertinent information.

*Statutory Authority G.S. 58-9(3); 58-21; 58-144.*

**.0412 COMPLETING FIRE AND CASUALTY ANNUAL STATEMENT BLANK**

These instructions are used by all insurance

companies which are required to report to the Commissioner on the Fire and Casualty Annual Statement Blank. The form includes general instructions, and specific instructions for lines and items about which there might be some question as to content, for preparation of the Fire and Casualty Annual Statement Blank and other pertinent information.

*Statutory Authority G.S. 58-9(3); 58-21; 58-144.*

**.0413 CONSOLIDATED ANNUAL STATEMENT: FIRE AND CASUALTY INSURERS**

These instructions are used by affiliated companies which are required to report to the Commissioner on the Fire and Casualty Annual Statement Blank. The form includes general instructions, and specific instructions for lines and items about which there might be some question as to content, for preparation of the consolidated annual statement for affiliated fire and casualty insurers and other pertinent information.

*Statutory Authority G.S. 58-9(3); 58-21; 58-144.*

**.0414 FIRE AND CASUALTY QUARTERLY STATEMENT BLANK**

The Fire and Casualty Quarterly Statement Blank is used by all insurance companies which complete the Fire and Casualty Annual Statement Blank which are required by the Commissioner to report on a quarterly basis. The form includes the company's name, company's address, executive officers and board of directors of the company, financial information on the company and its operations, schedules related thereto and other pertinent information.

*Statutory Authority G.S. 58-9(3); 58-21; 58-25.1; 58-144.*

**.0415 LIFE AND ACCIDENT AND HEALTH ANNUAL STATEMENT BLANK**

The Life and Accident and Health Annual Statement Blank is used by life and accident and health insurance companies which are required to report to the Commissioner annually. The form includes the company's name, company's address, executive officers and board of directors of the company, financial information on the company and its operations, detailed schedules related thereto and other pertinent information.

*Statutory Authority G.S. 58-9(3); 58-21.*

**.0416 ANNUAL STATEMENT BLANK: INSTRUCTIONS**

These instructions are used by life and accident and health insurance companies which are required to report to the Commissioner. The form includes general instructions, and specific instructions for lines and items about which there might be some questions as to content, for preparation of the Life and Accident and Health Annual Statement Blank and other pertinent information.

*Statutory Authority G.S. 58-9(3); 58-21.*

**.0417 LIFE AND ACCIDENT AND HEALTH QUARTERLY STATEMENT BLANK**

The Life and Accident and Health Quarterly Statement Blank is used by life and accident and health insurance companies which are required by the Commissioner to report on a quarterly basis. The form includes the company's name, company's address, executive officers and board of directors of the company, financial information on the company and its operations, schedules related thereto and other pertinent information.

*Statutory Authority G.S. 58-9(3); 58-25.1; 58-21.*

**.0418 ANNUAL STATEMENT BLANK: SEPARATE ACCOUNT BUSINESS**

The Life and Accident and Health Annual Statement Blank — Separate Account Business is used by life and accident and health insurance companies to report annually to the Commissioner the financial condition of and the results of the operation of its separate account business. The form includes the company's name, address, executive officers and board of directors of the company, financial information on the separate account business of the company and its separate account operations, detailed schedules related thereto and other pertinent information.

*Statutory Authority G.S. 58-9(3); 58-21; 58-79.2.*

**.0419 TITLE ANNUAL STATEMENT BLANK**

The Title Annual Statement Blank is used by title insurance companies which are required to report to the Commissioner annually. The form includes the company's name, company's address, executive officers and board of directors of the company, financial information on the company and its operations, detailed schedules related thereto and other pertinent information.

*Statutory Authority G.S. 58-9(3); 58-21; 58-134.*

**.0420 INSTRUCTIONS FOR COMPLETING  
TITLE ANNUAL STATEMENT  
BLANK**

~~These instructions are used by title insurance companies which are required to report to the Commissioner on the Title Annual Statement Blank. The form includes general instructions, and specific instructions for lines and items about which there might be some question as to content, for preparation of the Title Annual Statement Blank and other pertinent information.~~

*Statutory Authority G.S. 58-9(3); 58-21; 58-134; 58-137.*

**.0421 TITLE QUARTERLY STATEMENT  
BLANK**

~~The Title Quarterly Statement Blank is used by title insurance companies which are required by the Commissioner to report on a quarterly basis. The form includes the company's name, company's address, executive officers and board of directors of the company, financial information on the company and its operations, schedules related thereto and other pertinent information.~~

*Statutory Authority G.S. 58-9(3); 58-21; 58-25.1; 58-134; 58-137.*

**.0422 HOSPITAL: MEDICAL AND DENTAL  
SERVICE OR INDEMNITY CORP**

~~The Hospital, Medical and Dental Service or Indemnity Corporation Annual Statement Blank is used by hospital, medical and dental service or indemnity corporations which are required to report to the Commissioner annually. The form includes the company's name, company's address, executive officers and board of directors of the company, financial information on the company and its operations, detailed schedules related thereto and other pertinent information.~~

*Statutory Authority G.S. 57-9.*

**.0423 INSTRUCTIONS/ANNUAL  
STATEMENT BLANK: HOSPITAL:  
MEDICAL: DENTAL**

~~These instructions are used by hospital, medical and dental service or indemnity corporations which are required to report to the Commissioner on the Hospital, Medical and Dental Service or Indemnity Corporation Annual Statement Blank. The form includes general instructions, and specific instruc-~~

~~tions for lines and items about which there might be some question as to content, for preparation of Hospital, Medical and Dental Service or Indemnity Corporation Annual Statement Blank and other pertinent information.~~

*Statutory Authority G.S. 57-9.*

**.0424 FRATERNAL ANNUAL STATEMENT  
BLANK**

~~The Fraternal Annual Statement Blank is used by fraternal insurance companies which are required to report to the Commissioner annually. The form includes the company's name, company's address, executive officers and board of directors of the company, financial information on the company and its operations, detailed schedules related thereto and other pertinent information.~~

*Statutory Authority G.S. 58-9(3); 58-292.*

**.0425 INSTRUCTIONS FOR COMPLETING  
FRATERNAL STATEMENT BLANK**

~~These instructions are used by fraternal orders which are required to report to the Commissioner on the Fraternal Annual Statement Blank. The form includes general instructions, and specific instructions for lines and items about which there might be some questions as to content, for preparation of the Fraternal Annual Statement Blank and other pertinent information.~~

*Statutory Authority G.S. 58-9(3); 58-292.*

**.0426 FRATERNAL QUARTERLY  
STATEMENT BLANK**

~~When a fraternal order is required by the Commissioner to report on a quarterly basis, such quarterly statement shall be on the form designated as 11 NCAC 11A .0417 Life and Accident and Health Quarterly Statement Blank. The form includes the company's name, company's address, executive officers and board of directors of the company, financial information on the company and its operations, schedules related thereto and other pertinent information.~~

*Statutory Authority G.S. 58-9(3); 58-292.*

**.0427 ACCIDENT AND HEALTH POLICY  
EXPERIENCE EXHIBIT**

~~The Accident and Health Policy Experience Exhibit is prepared and filed annually by all companies with accident and health insurance to reflect its accident and health policy experience~~



during a year and is a supplement to the year-end annual statement. The form includes the company's name, company's address, kinds of accident and health policies, a brief breakdown of premiums, losses, commissions and other pertinent information.

*Statutory Authority G.S. 58-21; 58-25.1.*

#### **.0428 CREDIT LIFE AND ACCIDENT AND HEALTH EXHIBIT**

The Credit Life and Accident and Health Exhibit is prepared and filed annually by all companies with credit life and credit accident and health insurance to reflect its experience on such business during a year and is a supplement to the year-end annual statement. The form includes the company's name, type and kind of credit life insurance policies, type and kind of credit accident and health insurance policies, and premiums, losses, expenses, gain from operations on each type and kind of credit policy listed and other pertinent information.

*Statutory Authority G.S. 58-25.1.*

#### **.0429 CREDIT LIFE INSURANCE STATISTICAL REPORT**

The Credit Life Insurance Statistical Report is prepared and filed annually by all insurance companies with credit life insurance to reflect certain statistical data on such business during a year and is a supplement to the year-end annual statement. The form includes the company's name, type and kind of credit life insurance policies, and premiums and losses on each type and kind of credit life policy listed and other pertinent information.

*Statutory Authority G.S. 58-21; 58-25.1.*

#### **.0430 INSURANCE EXPENSE EXHIBIT**

The Insurance Expense Exhibit is prepared and filed annually by all companies required to report on the Fire and Casualty Annual Statement Blank to reflect its insurance expenses on all lines of business written during a year and is a supplement to the year-end annual statement. The form includes the company's name, company's address, allocation to expense groups, allocation to lines of business, ceding adjustment for effect of premium discounts and retrospective rating, exhibit of workmen's compensation earned premiums and incurred losses by state and other pertinent information.

*Statutory Authority G.S. 58-9(3); 58-130; 58-131.14.*

#### **.0431 STOCKHOLDER INFORMATION SUPPLEMENT**

The Stockholder Information Supplement is prepared and filed annually by all stock companies which have 100 or more stockholders to disclose certain stockholder information and is a supplement to the year-end annual statement. The form includes the company's name, interrogatories relative to financial reporting to stockholders, information regarding management and directors, a statement of beneficial ownership of securities and other pertinent information.

*Statutory Authority G.S. 58-9(3).*

#### **.0432 TOWN OR COUNTY FARM MUTUAL ANNUAL STATEMENT BLANK**

The Town or County Farm Mutual Annual Statement Blank is used by town or county mutual insurance companies which are required to report to the Commissioner annually. The form includes the company's name, company's address, executive officers and board of directors of company, financial information on the company and its operations, schedules related thereto and other pertinent information.

*Statutory Authority G.S. 58-9(3); 58-21.*

#### **.0435 ANNUAL GROSS PREMIUM TAX RETURN: RETALIATORY TAX RETURN**

The Gross Premium Tax Return is prepared and filed annually for the computation and collection of gross premium taxes on gross premiums, as defined by N.C.G.S. 105-228.5, from business done in this state during the preceding calendar year by every insurance company except hospital and medical service corporations, dental service corporations, farmer's mutual assessment fire insurance companies and fraternal orders or societies. The form includes the company's name, company's address, taxable premiums, tax computation procedures and other pertinent information.

*Statutory Authority G.S. 105-228.5.*

#### **.0436 STATEMENT OF INSTALLMENT GROSS PREMIUM TAX**

The Statement of Estimated Gross Premium Tax is prepared and filed quarterly for the computation and collection of gross premium taxes on estimated



~~quarterly taxable premiums collected in North Carolina by insurance companies that are chartered in a state which requires domestic North Carolina companies to pay taxes quarterly on premiums collected in that state. The form includes the company's name, company's address, computation procedures for estimated premium taxes due and other pertinent information.~~

*Statutory Authority G.S. 105-228.5.*

**.0437 ANNUAL ADDITIONAL GROSS PREMIUM TAX RETURN**

~~The Additional Annual Gross Premium Tax Return is prepared and filed annually for the computation and collection of additional gross premium taxes on fire and lightning premiums collected by insurance companies doing business in North Carolina. The form includes the company's name, company's address, taxable premiums, tax computation procedures and other pertinent information.~~

*Statutory Authority G.S. 105-228.5.*

**.0438 STATEMENT/INSTALLMENT ADDITIONAL ANNUAL GROSS PREMIUM TAX**

~~The Statement of Estimated Additional Annual Gross Premium Tax is prepared and filed quarterly for the computation and collection of additional gross premium taxes on estimated quarterly fire and lightning premiums collected by insurance companies doing business in North Carolina that are chartered in a state which requires domestic North Carolina companies to pay taxes quarterly on premiums collected in that state. The form includes the company's name, company's address, computation procedures for estimated premium taxes due and other pertinent information.~~

*Statutory Authority G.S. 105-228.5.*

**.0439 NC FIREMEN'S RELIEF FUND TAX ANNUAL RETURN**

~~The N.C. Firemen's Relief Fund Tax Annual Return is prepared and filed annually for the computation and collection of the N.C. Firemen's Relief Fund tax on taxable premiums collected by insurance companies in North Carolina on fire insurance business done within the corporate limits of a city or town. The form includes the company's name, company's address, taxable premiums, tax computation procedures and other pertinent information.~~

*Statutory Authority G.S. 118-1 to -4.*

**.0440 ANNUAL FRANCHISE OR PRIVILEGE TAX: HOSP AND MEDICAL CORP**

~~The Annual Franchise or Privilege Tax Hospital and Medical Service Corporation is prepared and filed annually for the computation and collection of taxes on gross annual collections as defined by N.C.G.S. 57-14 from hospital and medical service corporations. The form includes the company's name, the company's address, taxable premiums, tax computations procedures and other pertinent information.~~

*Statutory Authority G.S. 57-14.*

**.0441 ANNUAL FRANCHISE OR PRIVILEGE TAX: DENTAL SERVICE CORP**

~~The Annual Franchise or Privilege Tax Dental Service Corporation is prepared annually for the computation and collection of taxes on gross annual collections as defined by N.C.G.S. 57-14 from dental service corporations. The form includes the company's name, company's address, taxable premiums, tax computation procedures and other pertinent information.~~

*Statutory Authority G.S. 57-14.*

**.0442 NC DOMESTIC CORPORATION FRANCHISE AND INCOME TAX RETURN**

~~The North Carolina Domestic Corporation Franchise and Income Tax Return is used annually in the computation and collection of income tax on domestic insurance companies that would otherwise qualify to pay gross premium tax. The form is supplied by the North Carolina Department of Revenue and is used by the Department of Insurance with the knowledge and authority of the Department of Revenue for domestic insurance companies only. The form includes the company's name, company's address, tax computation procedures and other pertinent information.~~

*Statutory Authority G.S. 105-228.5.*

**.0443 AUTOMATIC EXTENSION OF TIME TO FILE**

~~The North Carolina Application for Automatic Extension of Time to File Corporation Franchise and Income Tax Return is used annually, when requested, for extension of time to file corporation~~

franchise and income tax return for an insurance company domiciled in North Carolina. The form is supplied by the North Carolina Department of Revenue and is used by the Department of Insurance with the knowledge and authority of the Department of Revenue for domestic insurance companies only. The form includes the company's name, company's address, estimated tax and payment required and other pertinent information.

*Statutory Authority G.S. 58-9.*

**.0444 ADDITIONAL EXTENSION OF TIME TO FILE**

The North Carolina Application for Additional Extension of Time to File Corporation Franchise and Income Tax Return is used annually, when requested, for an additional extension of time to file corporation franchise and income tax for an insurance company domiciled in North Carolina. The form is supplied by the North Carolina Department of Revenue and is used by the Department of Insurance with the knowledge and authority of the Department of Revenue for domestic insurance companies only. The form includes the company's name, company's address, balance of any estimated tax not previously paid and other pertinent information.

*Statutory Authority G.S. 58-9.*

**.0445 REFUND FOR CORPORATION FRANCHISE AND INCOME TAXES**

The North Carolina Refund for Corporation Franchise and Income Taxes is used for the refund of corporation franchise and income taxes for an insurance company domiciled in North Carolina. The form is supplied by the North Carolina Department of Revenue and is used by the Department of Insurance with the knowledge and authority of the Department of Revenue for domestic insurance companies only. The form includes the company's name, company's address, tax refund computations and other pertinent information.

*Statutory Authority G.S. 105-228.5.*

**.0446 CERTIFICATION OF WORKMEN'S COMPENSATION LOSS RESERVES**

The Certification of Workmen's Compensation Loss Reserves Form is completed annually to certify the amount of workmen's compensation loss reserves applicable to North Carolina which are held by stock and mutual casualty companies and reciprocal organizations in order to determine

the adequacy of the "stock" and "mutual" workmen's compensation security funds on deposit with the State Treasurer. The form includes company's name, aggregate amount of workmen's compensation loss reserves applicable to North Carolina, type of company, signature of officer of company and other pertinent information.

*Statutory Authority G.S. 97-107; 97-114.*

**.0447 WORKMEN'S COMPENSATION ASSESSMENT FORM**

The Workmen's Compensation Assessment Form is used to report the workmen's compensation premiums written in North Carolina to be assessed at the rate of one percent to build up the contributions in the "stock" and "mutual" workmen's compensation security funds in North Carolina to the statutory minimum of five percent of the reported workmen's compensation loss reserves applicable to North Carolina. The form includes the company's name, workmen's compensation premiums written in North Carolina, one percent assessment amount, signature of officer of company, and other pertinent information.

*Statutory Authority G.S. 97-107; 97-114.*

**.0448 FORM HC: INSURER HOLDING COMPANY REGISTRATION STATEMENT**

The Form HC—Insurer Holding Company Registration Statement is prepared by insurance companies subject to Article 12A of Chapter 58 and all applicable rules. The form includes the name of registrant, address and all pertinent information as required in the form and must be signed, certified and kept current in accordance with Article 12A and all applicable rules.

*Statutory Authority G.S. 58-124.2(b).*

**.0449 SALE OF VARIABLE ANNUITY CONTRACTS IN NORTH CAROLINA**

The requirements and procedures for sale of variable annuity contracts in North Carolina is furnished to companies seeking authority to write variable annuity contracts and contains step-by-step procedures that must be followed in order for a company to have its license amended to write variable annuity contracts and contains other pertinent information.

*Statutory Authority G.S. 58-79.2.*

**.0452 THE FORM A: INSIDER TRADING OF EQUITY SECURITIES**

These instructions are used as a guideline for completion of the Form A—Insider Trading of Equity Securities as described in 11 NCAC 11A .0454. These instructions include when the statement is to be filed, where the statement is to be filed, identity of beneficial owner and other pertinent information.

*Statutory Authority G.S. 58-86.2.*

**.0453 FORM B: INSIDER TRADING OF EQUITY SECURITIES**

These instructions are used as a guideline for the completion of the Form B—Insider Trading of Equity Securities as described in 11 NCAC 11A .0455. These instructions contain the statement of changes in beneficial ownership of securities, insider trading of equity securities, persons required to file the statement, when the statement is to be filed, where the statement is to be filed and other pertinent information.

*Statutory Authority G.S. 58-86.2.*

**.0454 INITIAL STATEMENT OF BENEFICIAL OWNERSHIP OF SECURITIES**

The Initial Statement of Beneficial Ownership of Securities—Insider Trading of Equity Securities Form is prepared upon the initial acquisition of beneficial ownership of the securities of a domestic stock insurance company. This form includes the name of the company, title of security, nature of ownership and other pertinent information.

*Statutory Authority G.S. 58-86.2.*

**.0455 STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES**

The Statement of Changes in Beneficial Ownership of Securities—Insider Trading of Equity Securities Form is prepared when there are changes in beneficial ownership of the securities of a domestic stock insurance company. This form includes the name of the company, title of security, date of transaction, and other pertinent information.

*Statutory Authority G.S. 58-86.2.*

**.0456 REVOCATION OR SUSPENSION OF LICENSE: FOREIGN INSURANCE**

The form of Notice of Revocation or Suspension of License of Foreign Insurance Company is used pursuant to the provisions of North Carolina General Statute 58-37 for the revocation or suspension of the license of a foreign insurance company doing business in the State of North Carolina. The notice sets forth the effective date of the revocation or suspension of the license, name and address of the company together with the basis for such action, in general terms, and the fact that no new business may be written by the company's agents in North Carolina until the company's authority has been restored.

*Statutory Authority G.S. 58-37; 58-44.4(a).*

**.0457 OFFICIAL RECEIPT OF SECURITIES**

The Official Receipt of Securities is prepared for all securities received by the Department of Insurance. The form includes, but is not limited to, the company's name, complete description of securities received and a certification by the Commissioner of Insurance that such securities have been received.

*Statutory Authority G.S. 58-182.6.*

**.0460 TAXES AND FEES APPLICABLE TO INSURANCE COMPANIES**

The Schedule of Taxes and Fees Applicable to Insurance Companies is used to show the applicable taxes and fees charged by this department. It is mailed to interested parties upon request. The form includes license fees, premium taxes, miscellaneous fees, admission fees for different types of insurance companies and other pertinent information.

*Statutory Authority G.S. 58-62; 105-288.4.*

**.0461 TOWN OR COUNTY FARM MUTUAL EXAMINATION REPORT BLANK**

The Town or County Farm Mutual Examination Report Blank is used as the examination report of a town or county farm mutual insurance company and is prepared by representatives of the Department of Insurance following an examination of a town or county farm mutual insurance company. The form includes the company's name, company's address, executive officers and board of directors of the company, financial information on the company and its operations, detailed schedules related thereto, general comments resulting from the examination and other pertinent information.

*Statutory Authority G.S. 58-9(3); 58-16.*

**.0462 CERTIFICATE OF COMPLIANCE:  
MUTUAL AGREEMENT**

The Certificate of Compliance—Mutual Agreement is used whenever an insurance company licensed in North Carolina has been required to appear and confer with departmental representatives regarding the company's financial condition or its operations. The form includes a confirmation of agreements reached during the conference, a certification that the company agrees to comply with requirements found mutually agreeable during the conference, and other pertinent information.

*Statutory Authority G.S. 58-9(1).*

**.0463 POWER OF ATTORNEY: SALE OF  
DEPOSITED SECURITIES**

The Power of Attorney Authorizing the Insurance Commissioner to Sell Securities Deposited by Insurance Companies in North Carolina is used when an insurance company is required to place securities on deposit with the Commissioner as a result of either its financial condition or its general operating condition. This form includes, but is not limited to, a signed statement by officials of the company authorizing the Commissioner of Insurance as lawful attorney, to sell and transfer any securities deposited or that may be deposited by a company in North Carolina, for the protection of North Carolina policyholders, as far as such sale may be necessary to pay any liability of the company when the Commissioner determines that the company is unable to fulfill its contractual obligations.

*Statutory Authority G.S. 58-9(3); 58-182.5.*

**.0464 CERTIFICATE OF DEPOSIT**

The Certificate of Deposit is prepared whenever there is a request for a confirmation of the securities on deposit with the Commissioner of Insurance. The form includes the company's name, full description of securities, the par value of securities and a certification of the deposit by the Commissioner of Insurance, together with other pertinent information.

*Statutory Authority G.S. 58-63.3.*

**.0465 CERTIFICATE OF COMPLIANCE:  
ACCIDENT AND HEALTH  
ADVERTISING**

The Certificate of Compliance for Accident and

Health Advertising is prepared whenever a domestic company requests a certificate of compliance with accident and health advertising rules and laws of North Carolina. The form includes, but is not limited to, the company's name, and a certification by the Commissioner of Insurance that the advertisement pertaining to accident and sickness insurance disseminated by the domestic insurance company during the preceding annual statement years appears to comply with the applicable provisions of the insurance laws of the State of North Carolina.

*Statutory Authority G.S. 58-54.4.*

**.0466 CERTIFICATE OF RETALIATORY  
PROVISIONS**

The Certificate of Retaliatory Provisions is prepared whenever another state department of insurance requests a certified statement of requirements of a foreign insurer to do business in North Carolina. The form includes, but is not limited to, a certification by the Commissioner of Insurance that there are attached brochures and forms which set forth all requirements, admission fees and taxes that would be applicable to a foreign insurer seeking admission to do business in North Carolina, similar to a North Carolina insurance company which is now seeking admission to another state.

*Statutory Authority G.S. 58-9(3).*

**.0467 CERTIFICATE OF GOOD STANDING**

The Certificate of Good Standing is prepared any time a company requests a certification of its good standing in North Carolina. The form includes, but is not limited to, the company's name, company's address, the lines of business it is authorized to write, and certification by the Commissioner of Insurance that the company has paid all taxes and fees owing to this state and is in good standing.

*Statutory Authority G.S. 58-9(3).*

**.0468 CERTIFICATE OF SIMILARITY:  
REPORT ON EXAMINATION**

The Certificate of Similarity—Report on Examination is prepared whenever a domestic company requests a certification as to the similarity of a report on examination with the original report on examination on file with the Department of Insurance. The form includes, but is not limited to, the company's name, date of the report on examination and a certification by the Commissioner of

Insurance that the copy of the report on examination has been compared with the original on file at the Department of Insurance and has been found to be a correct copy of the whole said original.

*Statutory Authority G.S. 58-9(3).*

**.0469 CERTIFICATE OF SIMILARITY:  
ANNUAL STATEMENT**

The Certificate of Similarity—Annual Statement is prepared whenever a domestic company requests a certification as to the similarity of an annual statement with the original annual statement on file with the Department of Insurance. The form includes, but is not limited to, the company's name, date of the annual statement and a certification by the Commissioner of Insurance that the copy of the annual statement has been compared with the original on file at the Department of Insurance and has been found to be a correct copy of the whole said original.

*Statutory Authority G.S. 58-9(3); 58-21.*

**.0470 CERTIFICATE OF RESERVE  
VALUATION**

The Certificate of Reserve Valuation is prepared whenever a domestic company requests a certification of the valuation of its reserves. The form includes the company's name, classification of net values for each class of reserves, a certification by the Commissioner of Insurance, and other pertinent information.

*Statutory Authority G.S. 58-9(3); 58-201.*

**.0471 CERTIFICATE OF COMPLIANCE:  
INSURANCE LAWS**

The Certificate of Compliance—Insurance Laws is prepared whenever a company requests a certification of its compliance with the insurance laws of North Carolina. The form includes the company's name, date of expiration of current license, classes of business authorized to write, a certification by the Commissioner of Insurance and other pertinent information.

*Statutory Authority G.S. 58-9(3); 58-72.*

**.0472 STAT INFORMATION: LIFE INS  
COMPANIES AND FRAT ORDERS**

Statistical Information on the North Carolina Business of Life Insurance Companies and Fraternal Orders is prepared annually by the Department from the annual statements of all life insurance

companies and fraternal orders licensed to do business in the State of North Carolina. The form includes all licensed life insurance companies and fraternal orders, types and amounts of business written in North Carolina, lines of business written in North Carolina and other pertinent information.

*Statutory Authority G.S. 58-11.*

**.0473 STAT INFO/FIRE AND  
CAS/RECIPROCAL/FACORY/CO  
FARM**

Statistical Information on the North Carolina Business of Fire and Casualty, Reciprocal, Factory Mutuals and County Farm Mutual Insurance Companies is prepared annually by the Department from the annual statement of all fire and casualty, reciprocal, factory mutual and county farm mutual insurance companies licensed to do business in the State of North Carolina. The form includes all licensed fire and casualty, reciprocal, factory mutual and county farm mutual insurance companies, types and amounts of business written in North Carolina and other pertinent information.

*Statutory Authority G.S. 58-11.*

**.0474 STATISTICAL INFORMATION:  
ACCIDENT AND HEALTH BUSINESS**

Statistical Information on the North Carolina Accident and Health Business is prepared annually by the Department from the annual statements of all insurance companies licensed to do accident and health insurance business in North Carolina. The form includes all licensed insurance companies, accident and health insurance by type of company, and accident and health premiums and losses from business in North Carolina and other pertinent information.

*Statutory Authority G.S. 58-11.*

**.0475 AUTHORIZED INVESTMENTS  
PURSUANT TO G.S. 58-79(a)**

An Inventory of Authorized Investments is to be prepared annually by each company and should list investments made pursuant to North Carolina General Statute 58-79(a) and as required by 11 NCAC 11C .0302. The form develops the amount of investments which must be invested pursuant to G.S. 58-79(a) and also lists the specific investments which satisfy that statutory requirement.

*Statutory Authority G.S. 58-79(a).*

**.0476 INVESTMENTS MADE PURSUANT TO G.S. 58-79(a)(14)**

An Inventory of Investments is to be prepared annually which reflects the investments made pursuant to North Carolina General Statute 58-79(a)(14) for the current year, the authorized amount which was available for such investment during the current year and an inventory of all "Basket Clause" investments, whenever made which are still outstanding at the end of the current year.

*Statutory Authority G.S. 58-79(a)(14).*

**.0477 AUTHORIZED INVESTMENTS PURSUANT TO G.S. 58-79.1**

An Inventory of Investments is to be prepared annually and should list authorized investments made pursuant to North Carolina General Statute 58-79.1 and as required by 11 NCAC 11C .0202. The form develops the amount of investments which must be invested pursuant to North Carolina General Statute 58-79.1 and also lists the specific investments which satisfy that statutory requirement.

*Statutory Authority G.S. 58-79.1.*

**.0478 CORPORATE RESOLUTION AND CONFLICT OF INTEREST**

This form of Corporate Resolution and Conflict of Interest Disclosure Statement is deemed acceptable to the Department for complying with the requirements of 11 NCAC 11C .0117; however, any resolution or disclosure statement substantially in conformance with the provisions of this form will also be deemed acceptable to the Department.

*Statutory Authority G.S. 58-9(1).*

**.0479 CONTRIBUTION FOR DOMESTIC INSURANCE COMPANIES**

The form of Certificate of Contribution is for domestic insurance companies issuing certificates of contribution under the provisions of 11 NCAC 11C .0114. This form includes the names of the issuing company and the contributing corporation, the terms and conditions of the certificate and any limitations or restrictions thereof, and other pertinent information.

*Statutory Authority G.S. 58-9; 58-79; 58-79.1.*

**.0480 PUBLIC HEARING ON PLAN OF EXCHANGE OF CAPITAL STOCK**

The form of Notice of Public Hearing on Plan of Exchange of Capital Stock is a guide for the preparation and publication of the notice of public hearing on a plan of exchange of capital stock pursuant to the provisions of NCGS 58-86.4. This form includes the time, date and location of the public hearing, the principal companies involved, the effect of the plan of exchange, the purposes for the public hearing and any other pertinent information.

*Statutory Authority G.S. 58-86.4.*

**.0481 PUBLIC HEARING ON PLAN OF MERGER OR CONSOLIDATION**

The form of Notice of Public Hearing on Plan of Merger or Consolidation is a guide for the preparation and publication of the notice of a public hearing on a plan of merger or consolidation pursuant to the provisions of N.C.G.S. 58-155.1. The form includes the time, date and location of the public hearing, the principal companies involved, the effect of the plan, the purposes for the public hearing and any other pertinent information.

*Statutory Authority G.S. 58-155.1.*

**.0482 EXAMINERS' EXPENSE AND DAYS WORKED REPORTS**

The examiners' expense and days worked reports are used by the insurance company examiners employed by the Commissioner for reporting expenses and days worked charges related to the examination of insurance companies together with other pertinent information.

*Statutory Authority G.S. 57-10; 58-16; 58-63(3).*

**.0483 STATEMENT OF EXAMINATION CHARGES**

The Statement of Examination Charges is used by the Department of Insurance in billing companies for examination expenses and days worked charges. The form includes the name of the company, period covered by the billing, amount of bill and other pertinent information.

*Statutory Authority G.S. 57-10; 58-16; 58-63(3).*

**.0484 FORM OF MODEL CUSTODIAL AGREEMENT**

The form of Model Custodial Agreement is used by the department as a guideline and is furnished upon request to domestic companies wishing to establish a custodial agreement with a banking

institution. The form includes the terms and conditions under which securities will be held and sets forth the safeguards of the arrangements.

*Statutory Authority G.S. 58-79; 58-79.1.*

**.0485 FORM OF MODEL CUSTODIAL AND FISCAL AGENCY AGREEMENT**

The form of Model Custodial and Fiscal Agency Agreement is used by the Department as a guideline and is furnished upon request to domestic companies wishing to establish a custodial and fiscal agency agreement with a banking institution. The form includes the terms and conditions under which securities will be held and sets forth the safeguards of the arrangement.

*Statutory Authority G.S. 58-79; 58-79.1.*

**.0486 RECONCILIATION: STATUTORY CAPITAL AND STOCKHOLDERS EQUITY**

The form of Reconciliation Between Statutory Capital and Surplus and Stockholders Equity is used by life insurance companies for financial reporting on the basis of a differing financial statement in accordance with G.S. 58-34.1 and as required by 11 NCAC 11E .0307.

The form includes a reconciliation between statutory capital and surplus and stockholders equity based on statutory accounting principles and on generally accepted accounting principles.

*Statutory Authority G.S. 58-34.1.*

**.0487 RECONCILIATION: STATUTORY NET GAIN AND NET INCOME**

The form of Reconciliation Between Statutory Net Gain From Operations and Net Income is used by life insurance companies for financial reporting and the basis of a differing financial statement in accordance with G.S. 58-34.1 and as required by 11 NCAC 11E .0307.

The form includes a reconciliation between statutory net gain from operations and net income based on statutory accounting principles and on generally accepted accounting principles.

*Statutory Authority G.S. 58-34.1.*

**.0488 VALUATIONS OF SECURITIES MANUAL**

The Valuations of Securities Manual prepared annually by the securities valuation office of the National Association of Insurance Commissioners

is used by insurance companies and the Department of Insurance to determine the admissible values of the companies' investments in securities at each calendar year end.

The manual includes but is not limited to association values, procedures for valuing bonds, procedures for valuing preferred stocks, procedures for valuing common stocks and warrants or options, instructions for calculating the mandatory securities valuation reserve for life insurance companies and fraternal benefit societies and instructions to companies on preparing annual statements.

*Statutory Authority G.S. 58-9(1).*

**.0489 AFFIDAVIT FOR RETURN OF DEPOSIT**

The form, Affidavit For Return of Deposit, is used by all companies for requesting return of deposit. This form must contain but is not limited to the following information:

- (1) name of company;
- (2) disposition of North Carolina business;
- (3) status of the company;
- (4) amount and type of business remaining in North Carolina;
- (5) date of withdrawal;
- (6) such other information as the Commissioner may require.

*Statutory Authority G.S. 58-9.*

**.0490 APPLICATION FOR LICENSE: HEALTH MAINTENANCE ORGANIZATION**

The "Application for License Health Maintenance Organization" is prepared annually for the renewal license or initial license of health maintenance organizations. The form includes the company's name, company's address, president and secretary of the company, a schedule of fees payable and other pertinent information.

*Statutory Authority G.S. 57A-3; 57A-4; 57A-21.*

**.0491 HEALTH MAINTENANCE ORGANIZATION: ANNUAL STATEMENT**

The "Health Maintenance Organization Annual Statement Blank" is used by health maintenance organizations which are required to report to the Commissioner annually. The form includes the company's name, company's address, executive officers and board of directors of the organization, financial information on the organization and its



operations, detailed schedules related thereto and other pertinent information (see form referred to in 11 NCAC 11A .0458 for instructions for completing this annual statement).

Statutory Authority G.S. 57A-9; 57A-21.

#### **.0492 INSTRUCTIONS FOR COMPLETING STATEMENT**

~~These instructions are used by health maintenance organizations which are required to report to the Commissioner on the "Health Maintenance Organization Annual Statement Blank." The form includes general instructions and specific instructions for lines and items about which there might be some questions as to content (see form referred to in 11 NCAC 11A .0491).~~

Statutory Authority G.S. 57A.

#### **.0493 HEALTH MAINTENANCE ORGANIZATION: QUARTERLY STATEMENT**

~~The "Health Maintenance Organization Quarterly Statement" is used by all health maintenance organizations which complete the "Health Maintenance Organization Annual Statement Blank" and which are required to report to the Commissioner on a quarterly basis. The form includes the company's name, company's address, executive officers and board of directors of the company, financial information on the company and its operations, schedules related thereto and other pertinent information (see forms referred to in .0491 and .0492 of this Section).~~

Statutory Authority G.S. 57A-9; 57A-21.

### **SECTION .0500 - CPA AUDITS**

#### **.0501 PURPOSE AND SCOPE**

(a) The purpose of this Section is to improve the Department's surveillance of the financial condition of insurers by requiring an annual examination by CPAs of the financial statements reporting the financial condition and the results of operations of insurers.

(b) This Section applies to all insurers; provided that insurers having direct premiums written in North Carolina of less than two hundred fifty thousand dollars (\$250,000) in any year and having less than 500 policyholders in North Carolina at the end of any year are exempt from this Section for such year unless the Commissioner makes a specific finding that compliance is neces-

sary for the Commissioner to carry out statutory responsibilities. Insurers must notify the Department on or before May 10 of each year of their exempt status.

(c) Foreign insurers filing audited financial reports in another state, pursuant to such other state's requirement of audited financial reports are exempt from this Section if:

- (1) A copy of the Audited Financial Report and Report on Internal Control Structure Related Matters noted in an audit are filed with such other state.
- (2) A copy of any Notification of Adverse Financial Condition Report filed with such other state is filed with the Commissioner within the time specified by such other state.

This Section does not prohibit, preclude, or in any way limit the Commissioner from ordering, conducting, or performing examinations of insurers under the General Statutes or this Title.

Statutory Authority G.S. 58-2-40; 58-2-205.

#### **.0502 DEFINITIONS**

As used in this Section:

- (1) "Audited Financial Report" means those items specified in 11 NCAC 11A .0504.
- (2) "Commissioner" means the Commissioner of Insurance of North Carolina or his authorized representative.
- (3) "CPA" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice.
- ~~(4) "Department" means the North Carolina Department of Insurance.~~
- ~~(5) "Insurer" means any insurance entity as identified in Articles 7, 15, 16, 17, 65 and 67 of Chapter 58 of the General Statutes and regulated by the North Carolina Department of Insurance Department.~~

Statutory Authority G.S. 58-2-40; 58-2-205.

#### **.0503 FILING AND EXTENSIONS FOR FILING REPORTS**

(a) All insurers shall have an annual audit by a CPA and shall file an audited financial report with the Commissioner on or before May 10 for the previous calendar year. Two copies of this report shall be filed in the office of the Chief Examiner.



Field Audit Section of the Department.

(b) An extension of the May 10 filing date may be granted by the Commissioner for a period of up to 45 days upon a showing by the insurer and its CPA of the reasons for requesting such extension and a determination by the Commissioner of good cause for an extension. The request for extension must be submitted in writing not less than 15 days prior to the due date and must be in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

*Statutory Authority G.S. 58-2-40; 58-2-205.*

**.0505 DESIGNATION OF CPA**

(a) Each insurer required by this Section to file an annual audited financial report must within 60 days after becoming subject to such requirement, register with the Commissioner in writing the name and address of the CPA retained to conduct the annual audit set forth in this Section. Insurers not retaining a CPA on the effective date of this Section shall register the name and address of their retained CPA not less than two months before the date when the first certification is to be filed.

(b) The insurer shall obtain a letter from such CPA, and file a copy with the Commissioner stating that the accountant is aware of the provisions of the North Carolina General Statutes and Administrative Code that relate to accounting and financial matters and affirming that he will express his opinion on the financial statements in the terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the Department, specifying such exceptions as he may believe appropriate. In addition, the CPA must affirm that he is aware of and will comply with the provisions of 11 NCAC 11A .0511.

(c) If a CPA who was not the CPA for the immediately preceding filed audited financial report is engaged to audit the insurer's financial statements, the insurer shall within 30 days of the date the CPA is engaged notify the Department of this event. The insurer shall also furnish the Commissioner with a separate letter stating whether in the 24 months preceding such engagement there were any disagreements with the former CPA on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him to make reference to the subject matter of the disagreement in connection with his opinion. The insurer shall also in

writing request such former CPA to furnish a letter addressed to the insurer stating whether the CPA agrees with the statements contained in the insurer's letter, and, if not, stating the reasons for which he does not agree; and the insurer shall furnish such responsive letter from the former CPA to the Commissioner together with its own.

*Statutory Authority G.S. 58-2-40; 58-2-205.*

**.0506 QUALIFICATIONS OF INDEPENDENT CPA**

(a) The Commissioner shall not recognize any person or firm as a CPA that is not in good standing with the American Institute of Certified Public Accountants and in all states in which the CPA is licensed to practice.

(b) Except as otherwise provided in this Section, a CPA shall be recognized as independent as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the North Carolina ~~Board of Public Accountant~~ State Board of Certified Public Accountant Examiners, or similar code.

(c) The Commissioner may hold a hearing to determine whether a CPA is independent and, considering the evidence presented, may rule that the CPA is not independent for purposes of expressing ~~his~~ an opinion on the financial statements in the annual Audited Financial Report made pursuant to this Section and require the insurer to replace the CPA with another whose relationship with the insurer is independent within the meaning of this Section.

*Statutory Authority G.S. 58-2-40; 58-2-205.*

**.0507 APPROVAL OF CPA**

(a) CPAs that practice pursuant to the provisions of this Section must file their intentions of such with the Department within 60 days of the effective date of this Section and thereafter by ~~January~~ January + October 1 of each year. The Department may reject such filing if the CPA does not meet its requirements. Inclusive within this filing must be evidence of the CPA's expertise in the areas of insurance auditing and insurance accounting. Such evidence must also demonstrate expertise in the areas of insurance auditing and insurance accounting for the staff assigned to the audit. In addition, the CPA must affirm that he is aware of and will comply with the provisions of 11 NCAC 11A

.0511.

(b) The CPA may be deemed to be experienced in the areas of insurance auditing and accounting if the office filing with the Department pursuant to this Section has existing audit clients in the insurance industry.

(c) The staff assigned to an audit pursuant to this Section may be deemed to be experienced in the areas of insurance auditing and accounting as follows:

- (1) Managerial staff that has been assigned or has had responsibility for audit engagements in the insurance industry in an amount averaging at least 30 percent of their chargeable time during the last three years.
- (2) Non-managerial staff that has been assigned or has had responsibility for audit engagements in the insurance industry in an amount averaging at least 15 percent of their chargeable time during the last three years or during their period of employment if employed less than three years.

(d) An audit performed by a CPA pursuant to this Section shall be staffed by managerial staff experienced in the areas of insurance auditing and accounting and by majority or equal non-managerial staff experienced in the areas of insurance auditing and accounting.

(e) As used in this Section, insurance includes financial services.

*Statutory Authority G.S. 58-2-40; 58-2-205.*

**.0508 SCOPE OF EXAMINATION AND REPORT OF CPA**

Financial statements furnished pursuant to 11 NCAC 11A .0504 shall be examined by a CPA. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards and such other procedures illustrated in the Financial Condition Examiner's Handbook promulgated by the ~~National Association of Insurance Commissioners~~ as the CPA deems to be necessary NAIC. The Commissioner may, from time to time, prescribe that additional auditing procedures be observed by the CPA in the examination of the financial statements of insurers pursuant to this Section.

*Statutory Authority G.S. 58-2-40; 58-2-205.*

**.0510 INTERNAL CONTROL STRUCTURE RELATED MATTERS**

(a) In addition to the annual Audited Financial Report, each insurer shall furnish the Commissioner with two copies of a report of matters noted in an audit related to the internal control structure.

(b) A report of the evaluation by the CPA of the accounting procedures of the insurer and its system of internal control, including any remedial action taken or proposed, shall be filed annually by the insurer with the Department at the time of the filing of the annual Audited Financial Report.

(c) Such report shall follow the Form for Reports on Internal Control Structure Related Matters Noted in an Audit described in Volume 1, Section AU 325, of the Professional Standards of the American Institute of Certified Public Accountants.

*Statutory Authority G.S. 58-2-40; 58-2-205.*

**.0511 CPA WORKPAPERS**

(a) Workpapers are the records kept by the CPA of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to his examination of the financial statements of an insurer. Workpapers, accordingly, may include work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules, or commentaries prepared or obtained by the CPA in the course of his examination of the financial statements of an insurer and that support his opinion thereof.

(b) Every insurer required to file an Audited Financial Report pursuant to this Section, shall require the CPA (through the insurer) to make available for review by Department examiners, ~~the~~ all workpapers prepared, or legible copies thereof, in the conduct of his examination. The completed workpapers and any written communications between the CPA and the insurer relating to the audit of the insurer shall be made available for review by ~~the Department examiners~~ at the offices of the insurer, at the Department, or at any other reasonable place as mutually agreed between the Department and the insurer. The insurer shall require that the CPA retain the audit workpapers for a period of not less than five years after the period reported thereon.

(c) In the conduct of any periodic review by the Department examiners, photocopies of pertinent audit workpapers may be made and retained by the Department.

*Statutory Authority G.S. 58-2-40; 58-2-205.*

**.0513 EXAMINATIONS**

(a) The Commissioner shall determine the nature, scope, and frequency of examinations under this Section conducted by department examiners pursuant to G.S. 58-2-130 the Examination Law. Such examinations may cover all aspects of the insurer's assets, liabilities, condition, affairs, and operations; and may include and be supplemented by audit procedures performed by CPAs as provided in this Section. The ~~type~~ types of examinations under the provisions of this Section performed by department examiners after the effective date of this Section shall be as follows:

- (1) Comprehensive examinations will be performed when in the judgement of the Commissioner a complete examination of the condition and affairs of the insurer is necessary.
- (2) Compliance examinations may consist of a review of the accountant's workpapers defined under 11 NCAC 11A .0511 and a general review of the insurer's corporate affairs and insurance operations to determine compliance with the North Carolina General Statutes and this Title. The examiners may perform alternative or additional examination procedures to supplement those performed by the CPA when the examiners determine that such procedures are necessary to verify the financial condition of the insurer.
- (3) Targeted examinations may cover such areas as life reserve valuations, claims analyses, organizational and capital changes, and such other areas as the Commissioner deems to be appropriate.

(b) Upon completion of each examination described in this Rule, the examiner appointed by the Commissioner shall make a full and true report on the results of the examination. ~~Each report shall include a general description of the audit procedures performed by the Department examiners and the procedures of the CPA that the examiners may have utilized to supplement their examination procedures and the procedures that were performed by the CPA if included as a supplement to the examination as provided in this Section.~~

*Statutory Authority G.S. 58-2-40; 58-2-131; 58-2-132; 58-2-133; 58-2-205.*

## **SUBCHAPTER 11B - SPECIAL PROGRAMS**

### **SECTION .0100 - SECURITIES**

#### **.0101 DEPOSITS OF MULTIPLE LINE INSURER**

~~When determining the amount of deposit for multiple line insurer apply the formula for North Carolina General Statute 58-182 for fire and marine lines and apply the formula for North Carolina General Statute 58-182.1 for casualty, fidelity and surety lines, then add the two amounts together to arrive at correct deposit for a multiple line insurer. The above procedure establishes the minimum deposit requirements for multiple line insurers; however, multiple line insurers may be required to exceed the minimum requirements when such companies become subject to other applicable rules.~~

*Statutory Authority G.S. 58-9(1); 58-182; 58-182(1).*

#### **.0102 DEPOSITS: LIFE COMPANIES FOR ADMISSION**

~~Where an applicant insurer voluntarily consents to a deposit of an amount as prescribed by the Commissioner of Insurance, the types of eligible securities to be used in a deposit of this nature for the sole protection of North Carolina policyholders are as follows:~~

- ~~(1) United States Government Bonds;~~
- ~~(2) Bonds of the State of North Carolina or its counties or cities;~~
- ~~(3) Certificates of deposit of building and loan associations, or banks situated in the State of North Carolina;~~
- ~~(4) Double A or better corporate rated bonds on a case-by-case basis.~~

*Statutory Authority G.S. 58-9(1).*

#### **.0103 DEPOSIT BY INSURANCE COMPANY WAIVER OPERATIONAL GAIN**

~~Whenever the three year operational gain for a foreign insurance company applying for admission to North Carolina is waived pursuant to 11 NCAC 14 .0207 and .0208, et seq., the applicant company will be required to place on deposit with the Commissioner, for the sole protection of North Carolina policyholders securities in the amount of one hundred thousand dollars (\$100,000) of the following eligible securities:~~

- ~~(1) United State Government Bonds; or~~
- ~~(2) Bonds of the State of North Carolina, or of its counties or cities; or~~
- ~~(3) Certificates of deposit for building and loan associations, or banks situated in the State of North Carolina.~~

This deposit requirement is in addition to any other deposit required under any other statute or rule.

*Statutory Authority G.S. 58-150; 58-182.7.*

**.0105 PURPOSE OF DEPOSIT OF  
GENERAL OR SPECIAL**

All deposits of foreign insurance companies shall be held in trust for the protection of North Carolina policyholders only and shall be designated as a special deposit. All deposits of domestic insurance companies shall be held in trust for the protection of all policyholders wherever situated and shall be designated as a general deposit, except where otherwise noted.

*Statutory Authority G.S. 58-182.4.*

**.0107 DEPOSITS OF DOMESTIC  
COMPANIES**

All domestic fire and casualty companies shall be required to make and maintain deposits under the provisions of G.S. 58-182 to 58-182.7 inclusive. As well as any other rules regarding deposits as developed by the N.C. Insurance Commission.

*Statutory Authority G.S. 58-182 through 58-182.8.*

**.0108 RIGHT OF COMPANY TO RECEIVE  
INTEREST**

The right of a company to receive earned interest from the securities on deposit in this state shall be extended to all deposits made under all rules of the Department of Insurance and the right of the Department to withhold interest in accordance with G.S. 58-183 58-5-60 shall also extend to all such deposits. Interest checks from issuing agents or institutions on bonds, notes, debentures or other securities on deposit shall be forwarded to the master trust bank. The interest shall be transmitted to the insurance company in a manner as detailed by the N.C. Department of Insurance and the Master Trust Bank.

*Statutory Authority G.S. 58-2-40; 58-5-1; 58-5-60.*

**.0109 RIGHT OF THE COMMISSIONER TO  
RECEIVE AND HOLD INTEREST**

The Commissioner may in his discretion receive and retain the interest on deposits of a company licensed in North Carolina which is placed in conservatorship, rehabilitation or receivership by its state of domicile, and where the Commissioner of Insurance has reason to believe that such company may potentially be unable to meet its claims

obligation in North Carolina. Such interest will be placed in an interest-bearing account at the master bank account and will be held in trust by the Commissioner for policyholders of the company in North Carolina.

*Statutory Authority G.S. 58-2-40; 58-5-60; 58-183.*

**.0110 SALE OF DEPOSIT FOR PAYMENT  
OF LIABILITIES**

Any company licensed in this state and refusing to pay a claim of a North Carolina resident, after such claim has been reduced to a final judgment and no appeals are outstanding, shall be subject to this Rule. The parties due the claim shall ask the commissioner to sell such deposit of securities as needed to pay claims plus all expenses involved in settling such claim. It is understood that such sale will be done by our master trust bank as further defined under Rule 11 NCAC 11B .0131. The procedure for this sale is as follows:

- (1) The claimant must inform the company or its North Carolina agent in writing 20 days in advance of his intentions to petition the Commissioner for sale of bonds.
- (2) After receiving the petition from the claimant the Commissioner shall advertise in a daily paper in Raleigh at least 30 days before the sale. Such advertising shall include, as a minimum, the following information:
  - (a) securities to be sold,
  - (b) company having the deposit,
  - (c) the law under which these securities are being sold.

The Commissioner will notify the company after the deposit has been sold, replace the deposit in an amount deemed to be adequate and reasonable by the Commissioner. The right of the commissioner to sell at public auction such amount of the securities on deposit with him as is necessary to pay an outstanding liability of a company as provided by North Carolina General Statute 58-184 G.S. 58-5-65 shall extend to all deposits made under all rules of the Department of Insurance.

*Statutory Authority G.S. 58-2-40; 58-5-1; 58-5-65.*

**.0113 DEPOSIT REQUIRED UPON INITIAL  
LICENSING**

Any company seeking admission to this state which is required to deposit securities with this state shall deposit such securities within ~~90~~ 30 days after its license is granted.

*Statutory Authority G.S. 58-2-40; 58-5-5; 58-5-10; 58-5-50.*

**.0116 SURETY BOND IN LIEU OF DEPOSIT OF SECURITIES**

~~Fire and casualty companies wishing to file a surety bond in lieu of a deposit of securities as provided for in G.S. 58-188.8 shall do so by using a "Deposit Bond" form as described in 11 NCAC 11A .0410. The surety bond must be issued by a company licensed to do business in North Carolina.~~

*Statutory Authority G.S. 58-188.8.*

**.0117 SURETY BOND IN LIEU OF DEPOSIT OF SECURITIES**

~~In addition to 11 NCAC 11B .0116 the Department requires that every company licensed in North Carolina and using a surety bond in lieu of a deposit of securities must provide this department annually a paid receipt or continuation certification providing the following information:~~

- ~~(1) — premium paid by the principal to the surety company for procurement of the bond;~~
- ~~(2) — bond number;~~
- ~~(3) — company making the premium payment, and~~
- ~~(4) — amount of bond.~~

~~This information is to be filed in the office of the Commissioner of Insurance on or before the 15th day of March of each year.~~

*Statutory Authority G.S. 58-188.8.*

**.0118 SURETY BOND IN LIEU OF DEPOSIT OF SECURITIES: NOT ALLOWED**

~~Any company licensed in North Carolina which is required to make a deposit pursuant to 11 NCAC 11B .0106 shall not be allowed to use a surety bond to comply with the requirements of that rule.~~

*Statutory Authority G.S. 58-9(1).*

**.0119 CONTINUATION OF DEPOSITS OF SECURITIES OF MERGING COMPANIES**

The deposits of securities of a licensed company which is merged into another company may, in the discretion of the Commissioner, be transferred to the account of the surviving company; thus increasing the original deposit of the surviving company by the amount of the deposit of the

~~merged company. If the merging company was a domestic company, then its deposit shall be redesignated from a general deposit for the protection of all policyholders to a special deposit for the protection of North Carolina policyholders only and transferred to the account of the surviving company.~~

*Statutory Authority G.S. 58-2-40; 58-5-40; 58-5-55.*

**.0121 SURETY BONDS: DEPOSIT OF SECURITIES: SPECIAL REQUIREMENT**

~~Fire and casualty companies wishing to file a surety bond in lieu of a deposit of securities as provided in G.S. 58-188.8, and where permitted under this Code, are not allowed to execute a surety bond on behalf of a surety company where both the surety and principal are members of the same group of companies regardless of whether both the principal and surety operate on a different plan or organization.~~

*Statutory Authority G.S. 58-188.8.*

**.0131 MASTER TRUST INSOLVENT COMPANIES**

All interest from securities on deposit will be deposited in an interest bearing account at the Master Trust Bank ~~to be transferred to the STIF Fund maintained by the Department of Insurance Budget Office.~~ This action will occur after receipt of a court order declaring the insurance company to be insolvent. Also at this time the principal will be sold by the Master Trust to the best bidder from a field of at least two bids. It is conclusively presumed that the sale of securities to the best bidder from a field of two bids will constitute a public sale.

*Statutory Authority G.S. 58-2-40; 58-5-1; 58-5-5; 58-5-10; 58-5-50.*

**.0132 DEPOSIT REQUIRED AMOUNT FOREIGN LIFE INSURERS**

~~All foreign life insurance companies being licensed in North Carolina must make and maintain a deposit of securities in accordance with the Department of Insurance Admission Data Guidelines from 11 NCAC 14 .0143. Such deposit must be made in accordance with the Master Trust Agreement between the Department of Insurance and a bank in North Carolina.~~

Statutory Authority G.S. 58-7.5; 58-9.

# **.0143 MASTER TRUST PURPOSE OF DEPOSIT**

It is understood that all deposits are held for the protection of North Carolina policyholders where-soever situated in cases of domestic insurance companies and for the protection of North Carolina policyholders only in cases of foreign insurance companies. The designation will be assumed unless the deposit is otherwise indicated by the North Carolina Commissioner of Insurance.

Statutory Authority G.S. 58-7.5; 58-9; 58-82.4.

## **SECTION .0200 - INSURANCE HOLDING COMPANY SYSTEMS**

### **.0202 REGISTRATION: STATEMENT OF APPLICABILITY OR EXEMPTION**

Every insurer licensed in North Carolina must file with the Department of Insurance one of the following certified statements:

- (1) an exemption statement indicating that insurer is not a holding company system as defined in G.S. 58-124.1;
- (2) a statement indicating that the insurer has filed a holding company registration statement with its state of domicile under an insurer holding registration and disclosure act substantially similar to the North Carolina act, and that all amendments to such statement are kept current with the state of domicile;
- (3) a holding company registration statement completed in accordance with 11 NCAC 11B-.0205 to .0210 on the form designated as 11 NCAC 11A-.0448. (Form HC Insurer Holding Company Registration Statement)

Statutory Authority G.S. 58-124.1.

### **.0203 DIVIDENDS: DISTRIBUTIONS IN VIOLATION OF G.S. 58-124.3(c)**

Any extraordinary dividend or any other extraordinary distribution of cash or other property which is made in violation of the provisions and limitations of North Carolina General Statute 58-124.3(c) shall be invalid and the transaction effecting such dividend or distribution shall be reversed on the books and records of the insurer and all cash or property shall be restored to the name of the insurer.

If such transaction is not voluntarily reversed by

the insurer, the Commissioner shall apply for an order in accordance with the provisions of North Carolina General Statute 58-124.7 enjoining such insurer from violating or continuing to violate the aforementioned section.

Statutory Authority G.S. 58-124.3(c).

### **.0204 MATERIALITY**

No information regarding sales, purchases, exchanges, loans, or extensions of credit or investments need be disclosed on the registration statement filed pursuant to G.S. 58-124.2 involving less than one half of one percent of an insurer's admitted assets of two hundred thousand dollars (\$200,000), whichever is the lesser, as of the 31st day of December next preceding the transaction.

Statutory Authority G.S. 58-124.2.

### **.0205 REGISTRATION: REQUIREMENT AND FORM**

An insurer required to register with the Commissioner pursuant to G.S. 58-124.2 shall furnish the required information on Form HC Insurer Holding Company Registration Statement designated as 11 NCAC 11A-.0448. The Form HC is intended to be a guide in the preparation of the registration statements. It is not intended to be a blank form which is to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are so prepared as to indicate to the reader the coverage of the items without the necessity of his referring to the text of the items or the instructions thereto. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if an item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

Statutory Authority G.S. 58-124.6.

### **.0206 COPIES: SIZE AND FORM OF FORM HC**

(a) Copies of Form HC. The signed original and one signed copy of Form HC including exhibits and all other papers and documents filed as a part thereof shall be filed with the Commissioner by personal delivery or mail addressed:

Commissioner of Insurance  
State of North Carolina  
Raleigh, North Carolina

(b) Size of Form HC. Statements should be

prepared on paper 8 1/2" x 11" or 8 1/2" x 13" in size and preferably bound at the top or the top left-hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements, or exhibits shall be clear, easily readable and suitable for photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency shall be converted into United States currency.

(e) ~~Forms; Incorporation by Reference, Summaries and Omissions.~~ Information required by any item of Form HC may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form HC provided such document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents already on file with the Commissioner need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the most important provisions of the document. In addition to such statement, the summary or outline may incorporate by reference particular parts of any exhibit or document on file with the Commissioner and may be qualified in its entirety by such reference. In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of such documents need to be filed with a schedule identifying the omitted documents and setting forth the material details in which such

documents differ from the documents a copy of which is filed.

(d) ~~Forms; Information Unknown or Unavailable and Extension of Time to Furnish.~~ Information required need be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonably available to the person filing, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person filing, the information may be omitted, subject to the following conditions:

- (1) The person filing shall give such information on the subject as he has knowledge of or can acquire with reasonable effort or expense, together with the sources thereof; and
- (2) The person filing shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person having information.

If it is impractical to furnish any required information, document or report at the time it is required to be filed, there may be filed with the Commissioner as a separate document an application: identifying the information, document or report in question; stating why the filing thereof at the time required is impractical; and requesting an extension of time for filing the information, document or report to a specified date. The application shall be deemed granted unless the commissioner within 30 days after receipt thereof, shall enter an order denying the application.

(e) ~~Forms; Additional Information and Exhibits.~~ In addition to the information expressly required to be included in Form HC, there shall be added such further material information, if any, as may be necessary to make the information contained therein clear and complete. The person filing may also file such exhibits as he may desire in addition to those expressly required by the statement. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer.

*Statutory Authority G.S. 58-124.6.*

## **.0207 AMENDMENTS TO FORM HC**

Any amendment to Form HC shall include on the top of the cover page the phrase: "Amendment No. \_\_\_\_\_ to" and shall indicate the date of the amendment and not the date of the original filing.

An amendment to Form HC shall be filed within 15 days after the end of any month in which the



following occurs:

- (1) ~~There is a change in the control of the registrant, in which case the entire Form HC shall be made current; or~~
- (2) ~~There is a material change in the information given in Item (5) or Item (6) of Form HC.~~

~~An amendment to Form HC shall be filed within 120 days after the end of each fiscal year of the ultimate controlling person of the insurancee holding company system. Such amendment shall make current all information in Form HC.~~

*Statutory Authority G.S. 58-124.6.*

## **.0208 EXEMPTIONS FROM FILING FORM HC**

~~A foreign or alien insurer otherwise subject to the act shall not be required to register if it is admitted in the domiciliary state of the principal insurer and in said state is subject to disclosure requirements and standards adopted by statute or regulation which are substantially similar to those contained in Article 12A, provided the Commissioner may require such insurer to furnish a copy of the registration statement or other information filed in said state. For the purposes of this Section the state of entry of an alien insurer shall be deemed to be its domiciliary state.~~

*Statutory Authority G.S. 58-124.6.*

## **.0209 ALTERNATIVE AND CONSOLIDATED REGISTRATIONS: FORM HC**

~~Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under Article 12A. A registration statement may include information regarding any insurer in the insurancee holding company system even if such insurer is not authorized to do business in this state. In lieu of filing a registration statement on Form HC, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile, provided:~~

- (1) ~~The statement or report contains substantially similar information required to be furnished on Form HC; and~~
- (2) ~~The filing insurer is the principal insurancee company in the insurancee holding company system.~~

~~The question of whether the filing insurer is the principal insurancee company in the insurancee holding company system is a question of fact, and~~

~~an insurer filing a registration statement or report in lieu of Form HC on behalf of an affiliated insurer shall set forth a simple statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurancee holding company system.~~

~~With the prior approval of the Commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer as hereinabove set forth.~~

~~Any insurer may take advantage of the provisions of G.S. 58-124.2(f) or (g) of Article 12A without obtaining the prior approval of the Commissioner. The Commissioner, however, reserves the right to require individual filing if he deems such filings necessary in the interest of clarity, ease of administration or the public good.~~

*Statutory Authority G.S. 58-124.6.*

## **.0210 DISCLAIMERS AND TERMINATION OF REGISTRATION UNDER FORM HC**

~~A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (hereinafter referred to as the "subject") shall contain the following information:~~

- (1) ~~the number of authorized, issued and outstanding voting securities of the subject;~~
- (2) ~~with respect to the person whose control is disclaimed all shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of such shares concerning which there is a right to acquire, directly or indirectly;~~
- (3) ~~all material relationships and bases for affiliation between the subject and the person whose control is disclaimed and all affiliates of such person;~~
- (4) ~~a statement explaining why such person should not be considered to control the subject.~~

~~A request for termination of registration shall be deemed to have been granted unless the Commissioner, within 10 days after he receives the request, notified the registrant otherwise.~~

*Statutory Authority G.S. 58-124.2.*

## **.0211 WHO MUST FILE THE INITIAL STATEMENT FORM HC**



(a) Every North Carolina domestic insurance company in a holding company orbit must file a Form HC in the manner and form as described in 11 NCAC 11A .0448.

(b) Every foreign insurance company licensed in North Carolina in a holding company orbit whose state of domicile does not have an insurance holding Registration and Disclosure Act similar to the North Carolina act must file a Form HC with the North Carolina Department of Insurance and such filing must be made on the form and manner as described in 11 NCAC .0448.

*Statutory Authority G.S. 58-124.1 to 58-124.11.*

## **.0212 FOREIGN COMPANIES EXEMPT IF APPLICABLE**

Foreign companies licensed in North Carolina and desiring exemption from the filing requirements of North Carolina must notify this department of such exemption in writing. Such notification must state the statute of their state of domicile and certify that their state of domicile has a holding company statute which is substantially similar to the North Carolina statute. The Department reserves the right to require copies of all registration and disclosure filings and all amendments if the Commissioner deems it necessary.

*Statutory Authority G.S. 58-124.1 to 58-124.11.*

## **.0213 WHEN TO FILE THE HC STATEMENT INITIAL**

Every insurer must file a registration and disclosure statement in the manner and form as described in 11 NCAC 11A .0448 60 days after July 1, 1971 or 15 days after it becomes subject to registration, whichever is later.

*Statutory Authority G.S. 58-124.1 to 58-124.11.*

## **.0214 WHEN TO FILE AMENDMENTS TO THE INITIAL STATEMENT FORM HC**

Every insurer filing a Form HC must amend the initial Form HC when one or more of the following actions occur:

- (1) When there is a change in the ultimate controlling person, Item 1 as reported in the initial statement Form HC (see form referred to in Form 11 NCAC 11A .0448 for content of Item 1); Such change must be reported to commissioner not later than 15 days after the month in which the change took place;

(2) When there is a material change in Items 5 and 6 as reported in the initial statement Form HC (see form referred to in 11 NCAC 11A .0448 for contents of Item 5 and 6); see also Rule 11 NCAC 11B .0204 for meaning of material, such change must be reported to commissioner not later than 15 days after the month in which the change took place;

(3) When there is a change in any item as reported in Form HC, such change shall be reported within 120 days after end of fiscal year, in as much as the fiscal year is a calendar year for annual statement purposes;

(4) Every insurer subject to the act must refile its HC filing by May 1 of each year and prior to renewal of license or provide a letter signed by an officer of the company to the effect that there has been no change in the filing as previously submitted.

*Statutory Authority G.S. 58-124.1 to 58-124.11.*

## **.0215 DEFINITIONS**

(a) Unless the context otherwise clearly requires, the definitions in G.S. 58-19-5 are incorporated into this Section by reference. Other nomenclature or terminology is according to industry usage if not defined in this Section or in G.S. 58.

(b) As used in this Section:

- (1) "Act" means the Insurance Holding Company System Regulatory Act, Article 19 of G.S. 58.
- (2) "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, or any other individual performing functions corresponding to those performed by these officers under whatever title.
- (3) "Foreign insurer" includes an alien insurer except where clearly noted otherwise.
- (4) "Ultimate controlling person" means a person that is not controlled by any other person.

*Statutory Authority G.S. 58-2-40.*

## **.0216 FORMS - GENERAL REQUIREMENTS**

(a) Forms A, B, C, and D are guides in the preparation of the statements required by G.S. 58-19-15, 58-19-25, and 58-19-30. They are not

blank forms that are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted if the answers to the items are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere in the form, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer to the item is in the negative, a statement to that effect shall be made.

(b) At least one complete copy of each statement, including exhibits and all other papers and documents filed as a part of the statement, shall be filed with the Commissioner by mail addressed to: Insurance Commissioner, State of North Carolina, Financial Compliance Section, P.O. Box 26387, Raleigh, North Carolina, 27611. The copy or copies shall be manually signed in the manner prescribed on the form. If the signature of any person is affixed under a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the statement.

(c) Statements shall be prepared on paper 8 1/2" x 11" in size and bound at the top or the top left-hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original sizes. All copies of any statement, financial statements, or exhibits shall be clear, easily readable, and suitable for photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

(d) Information required by an item of Form A, Form B, or Form D may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, or Form D, provided the document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the Commissioner that had been filed

within the preceding three years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that the material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference if incorporation would render the statement incomplete, unclear, or confusing.

(e) If an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to this statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the Commissioner that had been filed within the preceding three years and may be qualified in its entirety by the reference. If two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of the documents may be filed, along with a schedule identifying the omitted documents and setting forth the material details in which those documents differ from the documents filed.

(f) Information required shall be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonably available to the person filing, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to the following conditions:

- (1) The person filing shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof; and
- (2) The person filing shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to the person for the information.

(g) If it is impractical to furnish any required information, document or report at the time it is required to be filed, there may be filed with the Commissioner as a separate document:

- (1) identifying the information, document or report in question;

- (2) stating why the filing thereof at the time required is impractical; and
- (3) requesting an extension of time for filing the information, document or report to a specified date. The request for extension shall be deemed granted unless the Commissioner within 30 days after receipt thereof enters an order denying the request.

(h) In addition to the information expressly required to be included in Form A, Form B, Form C, and Form D, there shall be added such further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement. These exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Amendments to Forms A, B, C or D shall include on the top of the cover page the phrase "Amendment No. \_\_\_\_\_ to" and shall indicate the date of the amendment and not the date of the original filing.

*Statutory Authority G.S. 58-2-40; 58-19-15; 58-19-25; 58-19-30.*

#### **.0217 ACQUISITION OF CONTROL - STATEMENT FILING**

A person required to file a statement under G.S. 58-19-15 shall furnish the required information on Form A.

*Statutory Authority G.S. 58-2-40; 58-19-15.*

#### **.0218 ACQUISITION OF CONTROL - SOURCE OF CONSIDERATION**

In providing the information required by G.S. 58-19-15(b)(2), where the source of the consideration used or to be used in effecting the merger or other acquisition of control is a loan made in the lender's ordinary course of business, the identity of the lender shall be revealed to the Commissioner, but shall be kept confidential by the Commissioner, if the person filing the statements so requests.

*Statutory Authority G.S. 58-2-40; 58-19-15.*

#### **.0219 ANNUAL REGISTRATION OF INSURERS - STATEMENT FILING**

(a) An insurer required to file an annual registration statement under G.S. 58-19-25 shall furnish the required information on Form B.

(b) An insurer required to file an annual regis-

tration statement under G.S. 58-19-25 shall also furnish the information required on Form C. An insurer shall file a copy of Form C in each state in which the insurer is authorized to do business, if requested by the insurance regulator of that state. The insurer has 15 days after receipt of that regulator's notice to file the Form C.

*Statutory Authority G.S. 58-2-40; 58-19-25.*

#### **.0220 ALTERNATIVE AND CONSOLIDATED REGISTRATIONS**

(a) Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers that are required to register under G.S. 58-19-25. A registration statement may include information not required by the Act regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in this State. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report that it is required to file in its state of domicile, provided:

- (1) the statement or report contains substantially similar information required to be furnished on Form B; and
- (2) the filing insurer is the principal insurance company in the insurance holding company system.

(b) The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact; and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer shall set forth a brief statement of facts that will substantiate the filing insurer's claim that it, in fact, is the principal insurance company in the insurance holding company system.

(c) With the prior approval of the Commissioner, an unauthorized insurer may follow any of the procedures available to an authorized insurer under Paragraph (a) of this Rule.

(d) Any insurer may follow G.S. 58-19-25(g) or (h) without obtaining the prior approval of the Commissioner. The Commissioner may require individual filings if he deems the filings necessary in the interest of clarity, ease of administration, or the public good.

*Statutory Authority G.S. 58-2-40; 58-19-25.*

#### **.0221 DISCLAIMERS AND TERMINATION OF REGISTRATION**

(a) A disclaimer of affiliation or a request for

termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (hereinafter the "subject") shall contain the following information:

- (1) the number of authorized, issued and outstanding voting securities of the subject;
- (2) with respect to the person whose control is denied and all affiliates of the person, the number and percentage of shares of the subject's voting securities that are held of record or known to be beneficially owned, and the number of such shares concerning which there is a right to acquire, directly or indirectly;
- (3) all material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of the person;
- (4) a statement explaining why the person should not be considered to control the subject.

(b) A request for termination of registration shall be deemed to have been granted unless the Commissioner, within 30 days after he receives the request, notifies the registrant otherwise.

Statutory Authority G.S. 58-2-40; 58-19-25.

#### .0222 TRANSACTIONS SUBJECT TO PRIOR NOTICE - NOTICE FILING

(a) An insurer required to give prior notice of a proposed transaction under G.S. 58-19-30(b) shall furnish the required information on Form D.

(b) Requests under G.S. 58-19-30(c) for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

- (1) The amount of the proposed dividend;
- (2) The date established for payment of the dividend;
- (3) A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;
- (4) A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:

- (A) The amounts, dates and form of payment of all dividends or distributions (including regular dividends but ex-

cluding distributions of the insurers own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;

- (B) Surplus as regards policyholders (total capital and surplus) as of the preceding December 31;
- (C) If the insurer is a life insurer, the net gain from operations for the 12-month period ending the preceding December 31;
- (D) If the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the preceding December 31 and the two preceding 12-months periods; and
- (E) If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two calendar years;

(5) A balance sheet and statement of income for the period intervening from the last annual statement filed with the Commissioner and the end of the month preceding the month in which the request for dividend approval is submitted;

(6) A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs; and

(7) A brief statement as to the intended use(s) of the proposed dividend or distribution by the parent, and, if applicable, any upstream parent, of the insurer.

Statutory Authority G.S. 58-2-40; 58-19-30.

#### .0223 ADEQUACY OF SURPLUS

The factors set forth in G.S. 58-19-30(d) are not an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus no single factor is controlling. The Commissioner will consider the net effect of all of those factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus

maintained by other insurers, the Commissioner will consider the extent to which each of these factors varies from company to company; and in determining the quality and liquidity of investments in subsidiaries, the Commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

*Statutory Authority G.S. 58-2-40; 58-19-30.*

## SECTION .0400 - WORKMEN'S COMPENSATION FUND

### .0402 STOCK WORKMEN'S COMPENSATION SECURITY FUND CREATED

~~In order to administer this law an account has been established with the State Treasurer. The purpose of this account is to:~~

- ~~(1) receive assessments as required under North Carolina General Statute 97-109;~~
- ~~(2) receive interest from the investment account; and~~
- ~~(3) to pay claims of insolvent stock carriers.~~

~~At least, but not restricted to, twice annually this account is reviewed and accumulated funds are invested. The amount of the investment is controlled by anticipated expense of payment of claims. The types of investments made by this fund are controlled by the Commissioner of Insurance. The State Treasurer is charged with the responsibility of safekeeping these invested funds.~~

*Statutory Authority G.S. 97-107; 97-111.*

### .0403 MUTUAL WORKMENS' COMPENSATION SECURITY FUND CREATED

~~In order to administer this law an account has been established with the State Treasurer. The purpose of this account is to:~~

- ~~(1) receive assessments as required under North Carolina General Statute 97-116;~~
- ~~(2) receive interest from the investment account; and~~
- ~~(3) to pay claims of insolvent mutual carriers.~~

~~At least, but not restricted to, twice annually this account is reviewed and accumulated funds are invested. The amount of the investment is controlled by anticipated expense of payments of claims. The types of investments made to this fund are controlled by the Commissioner of Insurance. The State Treasurer is charged with the~~

~~responsibility of safekeeping these invested funds.~~

*Statutory Authority G.S. 97-111; 97-114.*

### .0404 INVESTMENTS OF FUNDS TO BE IN COUPON FORM

~~All investments made by the "stock" and "mutual" Workmen's Compensation Security Funds shall be in coupon form only.~~

*Statutory Authority G.S. 97-111; 97-112; 97-114.*

### .0405 VERIFIED REPORTS OF PREMIUMS TO BE FILED

~~Annually a form is prepared for distribution to all stock and mutual companies having authority to write workmen's compensation insurance and which form is described in 11 NCAC 11A .0446. The form is mailed in January of each year and is due on or before March 1st of the same year. The form requires, but is not limited to, the following information:~~

- ~~(1) name of company;~~
- ~~(2) aggregate of workmen's compensation loss reserves applicable to North Carolina business (without credit being taken for reinsurance ceded);~~
- ~~(3) type of organization: stock, mutuals, reciprocal;~~
- ~~(4) signature of officer;~~
- ~~(5) replies must be made under oath;~~
- ~~(6) verification under oath.~~

*Statutory Authority G.S. 97-108; 97-111; 97-115.*

### .0406 CONTRIBUTIONS: STOCK AND MUTUAL CARRIERS

~~When applying the formula of five percent of the loss reserves, the result must equal the value of the cash and investment fund. The Commissioner of Insurance may determine that an assessment is needed to bring the funds into compliance with the statute. (The Commissioner of Insurance can assess the companies at the rate of one percent of net premium written for a six month period.) If after this assessment has been received, the cash and investment accounts remain short of compliance with statute, the Commissioner of Insurance may make an additional assessment of one percent of the remaining six months' premiums. The schedule for such assessments is as follows:~~

- ~~(1) March of each year receive loss reserves;~~
- ~~(2) April of each year determine if assessment is needed;~~

- (3) ~~May of each year make assessment one percent of net written premiums from January 1st through June 30th of previous year;~~
- (4) ~~June of each year determine if additional assessment is needed, and if needed;~~
- (5) ~~Make assessment one percent of net premiums from July 1st through December 31st of previous year.~~

Statutory Authority G.S. 97-109; 97-111; 96-116.

#### **.0407 CALL FOR ONE PERCENT ASSESSMENT STOCK AND MUTUAL**

When determined by statute to be needed the call for the one percent assessment shall be on the form designated as 11 NCAC 11A .0447. This form must contain, but is not limited to, the following items:

- (1) ~~name of company;~~
- (2) ~~address of company;~~
- (3) ~~amount of workmen's compensation insurance premiums written in North Carolina for the time period involved;~~
- (4) ~~a calculation of one percent of the amount of workmen's compensation premiums written in North Carolina for the time period involved;~~
- (5) ~~signature and title of officer of company; and~~
- (6) ~~verification under oath.~~

Statutory Authority G.S. 97-111; 97-109; 97-116.

### **SECTION .0500 - PROMOTING AND HOLDING COMPANIES**

#### **.0501 PROMOTING AND HOLDING COMPANIES: GENERAL NATURE**

The promoting and holding companies section of the securities operational unit is responsible for the administration of Article 12 of the insurance laws of North Carolina.

Statutory Authority G.S. 58-120 to 58-124.

#### **.0503 FOREIGN AND HOLDING COMPANIES: UNLICENSED SUBSIDIARIES**

In the event an insurance or promoting or holding corporation is desirous of selling its securities in this state and such insurance or promoting or holding company does not have any of its subsidiaries licensed in this state, such

subsidiaries must meet the same minimum capital/surplus requirements for admission as indicated in 11 NCAC 14 .0201, et seq., even if the subsidiaries have no intention of obtaining license in this state.

Statutory Authority G.S. 58-2-40; 58-18-1 to 58-18-25.

#### **.0506 FOREIGN COMPANY SECURITIES SALE: "POSITION LETTER"**

As used in this Section, "position letter" means a letter from the Department that states the position of the Department relative to the sale of certain securities as offered. The letter shall state the predications upon which the "position letter" is written. Offering companies or their counsel not adhering to the terms and conditions of the letter may be refused further service by the Department.

Statutory Authority G.S. 58-2-40; 58-18-1 to 58-18-25.

#### **.0507 FOREIGN COMPANY SECURITIES: PRIVATE PLACEMENT**

If an insurance or promoting or holding corporation wants to sell its securities in this State, a position letter may be issued by the Department. Private placement shall be presumed to mean an offering made to fewer than 25 private citizens or corporate citizens of this State within a 12-month period. The offering company must comply with or be exempt from all other statutes and rules that pertain to the sale of securities and registration of broker/dealers.

Statutory Authority G.S. 58-2-40; 58-18-1 to 58-18-25.

#### **.0508 FOREIGN COMPANY SECURITIES: VERIFIABLE CAPITAL/SURPLUS**

When determining if an offering company has capital and surplus that would qualify the company or its subsidiary to meet the Department's minimum capital and surplus requirements for licensing, the capital and surplus must be verified in the appropriate NAIC Annual Statement as filed with the appropriate state of domicile. Capital and surplus figures from other sources may be accepted by the Commissioner.

Statutory Authority G.S. 58-2-40; 58-18-1 to 58-18-25.

#### **.0509 FOREIGN COMPANY SECURITIES:**

## INCONSEQUENTIAL INSURANCE RATIOS

When determining if an offering company can obtain a position letter from the Department to sell its securities in North Carolina, the following applies: If the assets of the offering company are less than three percent derived from the operations of an insurance subsidiary, then the offering company may request exemption from the Department based on the de minimus amount resulting from its insurance operations; however, it is required to comply with or be exempt from all other statutes and rules administered by the office of the Secretary of State or any other regulatory agency in North Carolina.

Statutory Authority G.S. 58-2-40; 58-18-1 to 58-18-25.

## .0510 FOREIGN COMPANY SECURITIES: CONFIDENTIALITY OF MATERIAL

All filings, whether preliminary or final, made under Article 18 of G.S. 58 are public documents. Material or folders marked "Confidential" or "Closed to General Public" by the filer are public records once filed with the Department.

Statutory Authority G.S. 58-2-40; 58-2-100; 58-18-1 to 58-18-25.

## .0511 FOREIGN COMPANY SECURITIES: SHELF REGISTRATION

Offering companies or counsel for offering companies shall obtain a position letter each time an additional block of the initial issue is made available for sale to prospective buyers located in North Carolina.

Statutory Authority G.S. 58-2-40; 58-18-1 to 58-18-25.

## .0512 FOREIGN COMPANY SECURITIES: DISCLAIMER OFFSHORE

If an offshore insurance or promoting or holding corporation wants to sell its securities in this State and meets the appropriate terms for issuance of a position letter, the prospectus or offering memorandum must contain, by sticker or otherwise, the following language in at least 10-point upper case type: "These securities have not been approved or disapproved by the Commissioner of Insurance of the State of North Carolina nor has the Commissioner ruled upon the accuracy or adequacy of this document. The buyer in North Carolina understands that neither the offerer nor its subsidiary are

licensed as insurance companies in North Carolina, nor do they meet the basic admissions requirements for licensing as insurance companies in North Carolina."

Statutory Authority G.S. 58-2-40; 58-18-1 to 58-18-25.

## .0513 FOREIGN COMPANY SECURITIES: DISCLAIMER GENERAL

If a foreign insurance or promoting or holding corporation wants to sell its securities in this State and meets the appropriate terms for issuance of a position letter, the prospectus or offering memorandum contain, by sticker or otherwise, the following language in at least 10-point upper case type: "These securities have not been approved or disapproved by the Commissioner of Insurance of the State of North Carolina nor has the Commissioner ruled upon the accuracy or adequacy of this document."

Statutory Authority G.S. 58-2-40; 58-18-1 to 58-18-25.

## .0514 FORMATION OF DOMESTIC COMPANIES: PROCEDURAL HANDLING STEP 1

Incorporators and or promoters that want to sell securities to raise capital for the formation of a domestic insurance company or to fund feasibility studies to determine if a domestic company should be formed must first write the Department and request the following:

- (1) an informal conference with members of the Department to discuss the proposal;
- (2) information on a timetable to implement the proposal;
- (3) information on obtaining a certificate of authority to sell securities to the public; and
- (4) information on obtaining a certificate of authority for agents to make an offering to the public.

Statutory Authority G.S. 58-2-40; 58-18-1 to 58-18-25.

## .0515 FOREIGN COMPANY SECURITIES: INSTITUTIONAL INVESTORS

If a foreign insurance or promoting or holding corporation wants to sell its securities in this State and its sales presentation and market approach will be restricted to accredited investors only, the corporation does not have to obtain a position



letter from the Department before the solicitation. The corporation must comply with or be exempt from all other statutes and rules governing the sale that are administered by the Office of Secretary of State or any other regulatory agency.

Statutory Authority G.S. 58-2-40; 58-18-1 to 58-18-25; 78A-17-(8).

**.0516 DOMESTIC COMPANY:  
PROJECTION**

Incorporators and or promoters must submit for review by the Department their projections for capitalization and operation of the proposed domestic insurance company. The projections must be written in a manner that allow the projected figures to be traceable to future NAIC annual financial statements. The projections shall be reviewed by the Department for adequacy and accuracy.

Statutory Authority G.S. 58-2-40; 58-18-1 to 58-18-25.

**.0517 DOMESTIC COMPANY:  
BACKGROUND INVESTIGATION  
REPORT**

Incorporators and promoters and agents for the incorporators and promoters are subject to background investigations conducted by the Department. Investigations will be completed before any sale or offer to sell securities. The costs of investigations shall be borne by the incorporators and promoters.

Statutory Authority G.S. 58-2-40; 58-2-133; 58-18-1 to 58-18-25.

**.0518 DOMESTIC COMPANY: ESCROW  
AGREEMENT**

An escrow agreement must be arranged by the persons listed in 11 NCAC 11B .0517 with a bank situated in North Carolina. If all other requirements are met, the Department will issue a certificate of authority to sell Class B common stock on a subscription basis. The subscription must be collected and placed in the escrow account. After the required amount of capital and surplus is in escrow and verified by the escrow agent, the Articles of Incorporation will be certified to the Secretary of State.

Statutory Authority G.S. 58-2-40; 58-18-1 to 58-18-25.

**SECTION .0600 - WORKERS'  
COMPENSATION SELF-INSURANCE**

**.0601 DEFINITIONS**

As used in this Section:

- (1) "Act" means Chapter 97 of the North Carolina General Statutes, as amended.
- (2) "Certified audit" means an ~~audit~~ audit upon which an auditor duly qualified to practice as a public accountant or certified public accountant expresses his professional opinion that the accompanying statements fairly present the financial position of the employer or of the group, in conformity with generally accepted accounting principles as considered necessary by the auditor under the circumstances.
- (3) "Commissioner" means the Commissioner of Insurance or his authorized representative.
- (4) "Corporate surety" means an insurer authorized by the Commissioner to write surety business in North Carolina.
- (5) "Employer" means a self-insured individual employer.
- (6) "Fund year" means that elected period of coverage, up to 12 month in duration, pursuant to which a group self-insurer extends coverage to its members.
- (7) "Group" means a self-insured group of employers.
- (8) "Loss fund" means that portion of net or standard premium, exclusive of past due balances deemed to be delinquent, that covers the retention of liability for a self-insurer under the terms of an aggregate excess insurance contract; and means, in the absence of an aggregate excess policy, that portion of net or standard premium, exclusive of past due balances deemed to be delinquent, that is allocated to pay claims.
- (9) "Manual premium" means premium determined by multiplying the annualized payroll amount, segregated into the proper workers' compensation job classifications, by the applicable manual premium rates approved for use in North Carolina.
- (10) "Qualified actuary" means a member in good standing of the Casualty Actuarial Society or a member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the



Casualty Practice Council of the American Academy of Actuaries.

- (11) ~~(10)~~ "Self-insurer" means either a self-insured individual employer or self-insured group of employers.
- (12) ~~(11)~~ "Service company" means a business that has contracted with an employer or group for the purpose of providing any or all services necessary to a self-insured program.
- (13) ~~(12)~~ "Surplus" means all ~~other~~ assets a loss fund has on hand that are in excess of all loss reserves and ~~actual and contingent liabilities, including general business expenses.~~
- (14) ~~(13)~~ "Trustees" means the governing body of a group that is elected by its members for stated terms of office to direct the administration of a group; and whose duties include responsibility for approving applications for new members of such group.
- (15) ~~(14)~~ "Trustees' fund" means any monetary fund under the control of the board of trustees of a group that is not part of the loss fund or that is not set aside to pay claims.

*Statutory Authority G.S. 97-93.*

#### **.0602 ADMINISTRATION - ALL SELF-INSURERS**

(a) Each self-insurer, as a condition of the authority to self-insure, shall provide proof of compliance with the provisions of this Section regarding its ability to operate a program of self-insurance, either through in-house capabilities or servicing companies.

(b) Every self-insurer shall make provision for competent persons to administer and adjust claims.

(c) If a self-insurer contracts with a service company, the Commissioner may use the service company as an intermediary in his dealings with the self-insurer if the Commissioner determines that this will result in a more rapid and accurate flow of information from the self-insurer and will aid in the self-insurer's compliance with this Section and the act.

(d) Each self-insurer contracting with a service company shall notify the Commissioner within 30 days after the contract execution.

(e) Each self-insurer and service company shall maintain its records in such manner to enable the Commissioner or any designated auditor to verify the accuracy and completeness of all reports and

documents that are submitted to the Commissioner pursuant to this Section, as well as all records and reports necessary to evaluate the financial solvency of the self-insurer and its ability to meet its obligations under the act. Such records shall be open to inspection by the Commissioner during regular business hours. Such records shall be retained for a period of time sufficient to ensure their availability for audit purposes. In the absence of other guidelines established by the Commissioner, all records shall be retained according to the schedule adopted by the Commissioner for insurers. The location of these records shall be within North Carolina and shall be made known to the Commissioner as necessary for audit purposes. A self-insurer may keep records outside of North Carolina; provided, that the self-insurer shall make such records available for inspection within North Carolina within ten days after any request for inspection by the Commissioner. If a self-insurer has contracted with a service company for claims handling processing, the self-insurer's claims files and related records may be located at the offices of the service company.

(f) Each self-insurer's and service company's records may, for good cause shown, be audited. If ordered, such audits shall be performed by accountants or auditors ~~acceptable to both the self-insurer and to~~ designated by the Commissioner. The reasonable cost of such audits shall be borne by the party examined.

(g) After each audit conducted, a written report shall be prepared and submitted to the Commissioner with a copy to the self-insurer or service company, and such report shall be a part of the annual review for compliance with this Section. Any deficiencies cited by the audit report shall be considered in determining whether there may be grounds for the suspension, revocation, or nonrenewal of the authority to self-insure; provided, however, that no self-insurer shall have its authority to self-insure suspended, revoked or not renewed without a prior notice and hearing before the Commissioner.

*Statutory Authority G.S. 58-2-145; 97-93.*

#### **.0604 REPORTS - ALL SELF-INSURERS**

(a) Each self-insurer shall submit to the Commissioner payroll information for the purpose of tax assessment as required by this Section. The Rules, classifications, and rates as set forth in the most recently approved workers' compensation and employers' liability insurance manual governs the audits of payrolls and the adjustments of premi-

ums. Payroll information shall be submitted summarized by classification. Each self-insurer shall maintain true and accurate payroll records. Unless payroll records are maintained in such manner that a true and accurate identification and division by employer or group member departments or divisions or occupational classifications can readily be determined for proper rating, the entire payroll of that employer or group member shall be presumed to be within the classification to which the highest workers' compensation insurance rate is applicable.

(b) Each self-insurer shall, within 180 days after the end of each calendar year, file with the Commissioner a statement of total workers' compensation benefits paid by the self-insurer during the reported calendar year, as well as total future liability of all open claims, regardless of the dates of accidents.

(c) Each year every self-insurer shall file certified audited financial statements of financial condition with the Commissioner. ~~These statements must be certified audits.~~ These statements shall, at a minimum, comprise a balance sheet, ~~profit and loss statement, and a statement of change in loss fund position~~ statement of operations, statement of cash flows, and all applicable notes to the financial statements. Noncertified interim financial statements may be required by the Commissioner at the end of any fiscal quarter or any calendar month whenever he has good cause to believe there has been a deterioration in the financial condition of a self-insurer that adversely affects the self-insurer's ability to pay expected losses.

(d) Extensions ~~may be~~ granted by the Commissioner for good cause will be limited to one 45-day period.

*Statutory Authority G.S. 58-2-145; 97-93.*

#### .0607 APPLICATION - EMPLOYERS

(a) Each employer desiring to self-insure shall make application to the Commissioner for such authority on a form prescribed by the Commissioner. This application shall be filed with the Commissioner at least 60 days prior to the desired effective date of self-insurer status. The application shall ~~contain answers to all questions propounded~~ be completed and shall be a sworn statement. Until all requested data has been filed, an application is incomplete.

(b) In addition to the filing of the application, compliance with all of the following is required:

(1) The applicant shall provide the Com-

missioner with certified audited financial statements of financial condition of current origin for the most recent reporting period and the two next most recent years including, at a minimum, a balance sheet, a ~~profit and loss statement, and a statement of change in loss fund position,~~ statement of operations, a statement of cash flows, and applicable notes to the financial statements prepared on the basis of generally accepted accounting principles consistently applied.

(2) Specific excess insurance with policy limits and retention amounts acceptable to the Commissioner, may be required for each applicant.

(3) Each applicant shall satisfy the Commissioner that either it has, within its own organization, ample facilities and competent personnel to administer and adjust claims, or shall contract with a service company to provide these services.

(4) Each applicant shall submit a summary of worker's compensation benefits paid for the last three calendar years, as well as total future liability of all open claims. This summary should indicate a breakdown as to benefits paid for medical and indemnity.

(5) Each applicant with 20 or more full-time employees shall submit a certificate or other evidence of safety inspection, completed before the application, that certifies that all safety requirements of the North Carolina Department of Labor have been met.

(c) Only an applicant whose modified workers' compensation insurance premium has reached one hundred thousand dollars (\$100,000) per year and whose total fixed assets amount to five hundred thousand dollars (\$500,000) or more is eligible to apply for authority to self-insure. For good cause shown, the Commissioner may waive the requirement on fixed assets or minimum premium volume. In considering the financial strength and liquidity of the applicant to comply with the act, the Commissioner may consider, among other evaluative criteria, the applicant's: organizational structure and management background; profit and loss history; source and reliability of financial information; compensation loss history; number of employees; claims administration; excess insurance; access to excess insurance markets; ~~ratio of~~

~~current assets to current liabilities; ratio of tangible net worth to annual self insurance retention; ratio of net worth to annual compensation premium; ratio of working capital to total assets; ratio of quick assets to current liabilities; ratio of debt to tangible net worth; ratio of total debt to total assets; ratio of cash flow to total debt; ratio of new sales to total assets; ratio of new income to total assets; ratio of net income to net sales; (if a mercantile or manufacturing business) ratio of net credit sales to average accounts receivable; ratio of income, before interest and income taxes, to annual interest expense; and such other meaningful significant financial analyses ratios in each case that the Commissioner may apply deem appropriate.~~

(d) All financial statement formulations shall be provided in such detail as to facilitate application of indicated ratio analyses and trend analysis.

(e) Each applicant shall execute and file with the Commissioner an agreement, which shall be part of his application, wherein the applicant agrees to fully comply with the act and to deposit with the Commissioner cash, acceptable securities, or a surety bond issued by a corporate surety that will guarantee the applicant's compliance with this Section and with the act.

(f) After considering the application and all supportive data, the Commissioner shall either grant authorization or deny authorization and advise the applicant of deficiencies that constitute the basis for denial. If the deficiencies are resolved to the Commissioner's satisfaction within 30 days of the date of Commissioner's notice, authorization shall be granted.

(g) The applicant may, in the discretion of the Commissioner, be granted additional time to remedy deficiencies in its application in order to meet the requirements of this Section. A request for an extension of time shall be made in writing by the applicant within 30 days after notice of denial by the Commissioner. If the Commissioner is not satisfied that all requirements of this Section have been met, the application shall be considered withdrawn.

(h) Upon meeting the requirements of this Section, an applicant shall receive a written certificate of authority to self-insure.

*Statutory Authority G.S. 58-2-40; 97-93.*

#### **.0608 DEPOSITS: BONDS: EXCESS INSURANCE - EMPLOYERS**

(a) Each employer shall, on or before the effective date of operation of its plan of

self-insurance, deposit with the Commissioner, cash or acceptable securities, or post a surety bond issued by a corporate surety, in an amount equal to ten percent of its total annual premium, but such amount shall not be less than ~~two hundred thousand dollars (\$200,000)~~ nor greater than five hundred thousand dollars (\$500,000). For good cause shown, the Commissioner may require a bond or deposit in excess of five hundred thousand dollars (\$500,000). ~~A surety bond or security deposit in excess of two hundred thousand dollars (\$200,000) may be required by the Commissioner~~ depending on the financial status of the employer or if the employer has experienced a deterioration in financial condition.

(b) Each employer, shall maintain specific excess insurance with a limit of at least ~~one million dollars (\$1,000,000)~~ five million dollars (\$5,000,000). Higher limits may be required for an employer with a higher risk of multiple injuries from a single occurrence. The retention underlying specific excess policies shall be the lowest retention generally available for employers of similar size and exposure, but may, in the Commissioner's discretion, be established at higher levels consistent with the employer's claims experience and financial condition.

*Statutory Authority G.S. 58-2-40; 97-93.*

#### **.0609 REPORTS - EMPLOYERS**

(a) A report may be submitted on other than a prescribed form only with the prior approval of the Commissioner. The deadlines for filing of prescribed reports are as provided in this Section. Reports other than those with prescribed due dates shall be filed at such times that the Commissioner establishes and, except reports related to financial impairment, shall not be required to be filed without 30 days prior written notice from the Commissioner.

(b) Copies of all final payroll reports showing payrolls by appropriate classification shall be filed.

(c) Each employer shall promptly report to the Commissioner changes in the names and addresses of the businesses it self-insures or intends to self-insure, as well as changes in its business structure, including its divisions, subsidiaries, and internal organization. Any such change shall be reported in writing to the Commissioner within ten days after the effective date of the change. Appropriate endorsements to surety bonds or excess insurance policies, or both, that specify any additional named insureds shall be filed within 90 days of the effective date of the change. Bonds of

coverages or cover notes providing for at least 90 days coverage shall be filed within 30 days after the effective date of the change.

(d) Each employer shall submit a statement of financial condition meeting the criteria established in this Section within ~~270~~ 180 days following the close of its fiscal year.

(e) Every employer shall submit on an annual basis a report from a ~~recognized actuarial firm~~ qualified actuary, of outstanding workers' compensation liabilities for each fund year. Such report shall show liabilities, excess carrier and other qualifying credits, if any, and net retained liabilities.

(f) All employers shall maintain such payroll records that are necessary to complete and verify the accuracy of the annual self-insurers payroll report.

~~(g) An employer that does not have the record keeping capability required by this Section on October 1, 1990, shall comply with this Section within one year thereafter.~~

~~(g)~~ (h) Summary loss reports formatted by classifications as prescribed in the unit statistical plan of the principal workers' compensation rating organization in North Carolina shall be filed as required by the Commissioner.

*Statutory Authority G.S. 58-2-40; 58-2-145; 97-93.*

#### .0610 APPLICATION - GROUPS

(a) Application may be made to provide workers' compensation coverage for a group in accordance with the terms of an indemnity agreement. Application shall be made to the Commissioner for such privilege on forms prescribed by the Commissioner and shall be filed with the Commissioner at least 60 days prior to the desired effective date of self-insured status. The application shall contain answers to all questions propounded and shall be a sworn statement. Until all requested data has been filed, an application is incomplete.

(b) The application shall include without limitation to the following:

- (1) a copy of the bylaws of the proposed group;
- (2) an individual application of each member of the group applying for coverage in the group on the inception date of the group;
- (3) a current certified financial statement of each group, including at a minimum, a balance sheet, a profit and loss statement of operations, a statement of cash

flows, and a statement showing the combined ~~net worth~~ equity of all members applying for coverage on the inception date of the group. Such combined net worth shall be an amount that establishes the financial strength and liquidity of the businesses;

- (4) evidence of the financial ability of the group to meet its obligations under the act;
- (5) a composite listing of the estimated standard premium to be developed for each member individually and in total as a group. Payroll data for each of the three preceding years shall be furnished by risk classification;
- (6) documented agreement by each member to pay to the group not less than 25 percent of estimated annual manual premium not later than the initial day of coverage afforded by the group;
- (7) a confirmation of any required excess insurance underwritten by an authorized insurer;
- (8) designation of the initial trustees or administrator, or both;
- (9) proof of a fidelity bond, issued by an authorized insurer, covering the group administrator in a form and an amount acceptable to the Commissioner;
- (10) an indemnity agreement jointly and severally binding the group and each member thereof to comply with the provisions of the act and pay obligations imposed by the act, which shall conform to an indemnity agreement in a form acceptable to the Commissioner;
- (11) a breakdown of all projected administrative expenses for the fund year in dollar amount and as a percentage of the estimated annual manual premium;
- (12) proof provided by the trustees, satisfactory to the Commissioner, that the annual gross premiums of the group will be not less than one hundred thousand dollars (\$100,000);
- (13) proof, satisfactory to the Commissioner, that either the applicant has within its own organization ample facilities and competent personnel to service its own program with respect to underwriting matters, claims adjusting, and industrial safety engineering; or that the applicant will contract with a service company to provide these services and

the reporting of loss data to the Commissioner. If any plan servicing is to be done by the applicant, biographies of those persons who will be responsible for or performing such functions shall be submitted to the Commissioner with the application;

- (14) a letter of assent stipulating the applicant's acceptance of membership status in the North Carolina Self-Insurance Guaranty Association under Article 4 of the act.

(c) After considering the application and all supportive data, the Commissioner shall either grant authorization or deny authorization and inform the applicant of deficiencies that constitute the basis for denial. If the deficiencies are resolved to the Commissioner's satisfaction within 30 days of the Commissioner's notice, authorization shall be granted to the applicant.

(d) The applicant may, in the discretion of the Commissioner, be granted additional time to remedy the deficiencies in its application in order to meet the requirements of this Section. A request for an extension of time shall be made in writing by the applicant within 30 days after notice of denial by the Commissioner. If the Commissioner is not satisfied that all requirements of this Section have been met, the application shall be considered withdrawn.

(e) Upon meeting the requirements of this Section, the applicant shall receive a written certificate of authority to self-insure.

*Statutory Authority G.S. 58-2-145; 97-93.*

#### **.0612 REPORTS - GROUPS**

(a) Reports as to financial condition, payroll records, coverage, accident experience, compensation payments, and other reports shall be filed with the Commissioner as follows:

- (1) Each group shall file with the Commissioner within ~~270~~ 180 days after the close of the fund year a statement of financial condition, which statement shall include a report of the outstanding workers' compensation liabilities of the group, including details of the amount and source of all monies recoverable from any third party. Financial statements shall, at a minimum, comprise a balance sheet, a ~~profit and loss~~ statement of operations, and a statement of ~~change in group position~~ cash flows.
- (2) Every group shall submit on an annual

basis a report from a ~~recognized actuarial firm~~ qualified actuary of outstanding workers' compensation liabilities for each fund year. Such report shall show liabilities, excess carrier and other qualifying credits, if any, and net retained liabilities.

- (3) Summary loss reports, formatted by classifications as prescribed in the unit statistical plan of the principal workers' compensation rating organization in North Carolina, shall be filed as required by the Commissioner.

(b) The failure or refusal of any group to file the reports specified in Paragraph (a) of this Rule within the time limits prescribed by this Section or by any provision of the act may be grounds for revocation, suspension, or nonrenewal of the authority to self-insure.

(c) Every group member shall notify the group to which it belongs of any changes in the names, addresses, structure, or composition of any businesses or subsidiaries that participate in the group. Every group member shall notify the group of any additions or deletions of the businesses or subsidiaries participating in the group, including changes in majority ownership interest in any business or subsidiary that is covered or that will be covered by the group. All such changes shall be reported to the group within ten days after the effective date of the change. Upon receipt of such notice, each group shall notify the Commissioner, in writing, of such reported changes.

(d) Any group that does not have the record-keeping capability required by this Section on October 1, 1990, must be in compliance with this Section within 90 days thereafter.

*Statutory Authority G.S. 58-2-40; 58-2-145; 97-93.*

#### **.0615 PAYMENT OF DIVIDENDS BY GROUP FUNDS OR ASSOCIATIONS**

No group fund or association created under this Section shall make any payment of dividends or return fund surplus to its members without first obtaining written permission from the Commissioner.

*Statutory Authority G.S. 58-2-40; 97-93(b).*

### **SUBCHAPTER 11C - ANALYSIS AND EXAMINATIONS**

#### **SECTION .0100 - GENERAL PROVISIONS**

**.0103 REPRODUCTION OF REPORTS ON EXAMINATION**

Reports on examination shall be reproduced by the company in sufficient quantity to accommodate its the Department's needs, as well as the needs of the company. The report shall be reproduced within 45 days from the date the report on examination becomes a public document; such report to be void of any type of advertisements.

*Statutory Authority G.S. 58-2-40; 58-2-131; 58-65-105.*

**.0107 REINSURANCE: WHEN PERMITTED**

~~North Carolina General Statute 58-39.3 authorizes a company to reinsure its risks and policy liabilities in any other solvent insurer hereinafter called the assuming insurer. Provided, that in the event such reinsurance is with a company not authorized to do business within this state and such company does not meet the minimum statutory requirements for such assuming company to become licensed in this state, the direct writing company shall, notwithstanding such reinsurance, maintain all the reserves required by statute of such line of business under the appropriate liability caption for unauthorized reinsurance in the "Association Edition of the Annual Statement Blank."~~

*Statutory Authority G.S. 58-59.3.*

**.0108 DIVIDENDS TO POLICYHOLDERS: DEPARTMENT INTERPRETATION**

The North Carolina General Statutes provide that no dividend shall be paid unless fair and equitable and for the best interest of the company and its policyholders. ~~N.C.G.S. 58-97~~ G.S. 58-8-25 is interpreted by the Department to mean that no domestic stock or mutual insurance company may declare dividends to its policyholders except from the ~~earned income or earned surplus~~ of the company as reflected in the company's annual statement filed with the Commissioner of Insurance and prepared in accordance with statutory accounting practices.

*Statutory Authority G.S. 58-2-40; 58-8-25.*

**.0109 DIVIDENDS TO STOCKHOLDERS: DEPARTMENT INTERPRETATION**

~~North Carolina General Statute 58-85.4~~ G.S. 58-7-130 is interpreted by the Department to mean that no domestic stock insurance company may declare dividends to its stockholders except from the ~~earned income or earned surplus~~ of the compa-

ny as reflected in the company's annual statement filed with the Commissioner and prepared in accordance with statutory accounting practices. Provided, however, that stock dividends to stockholders out of paid in and contributed surplus will be permitted on a case by case basis depending on the necessity for a company to distribute such stock dividend.

*Statutory Authority G.S. 58-2-40; 58-7-130.*

**.0111 INVESTMENT IN THE INTERNATIONAL BANK FOR RECONST AND DEV**

~~The United States of America is a member of the International Bank for Reconstruction and Development as authorized by Public Law 171-79th Congress, and has subscribed to a portion of the capital stock thereof; and said international bank has offered debentures to investors in issues of 10 and 25 year maturities.~~

~~The Comptroller of the Currency, United States Treasury Department, has authorized national banks to purchase such debentures subject to the limit of 10 percent of their capital and surplus and such debentures qualify as legal investments for insurance companies under the statutes or rulings of various states, and subject to various limitations.~~

~~Under the North Carolina statutes insurance companies may not invest in such debentures without the specific authorization of the Commissioner of Insurance; however, it is the ruling of this department that domestic insurance companies of North Carolina may invest funds, subject to a limit of 10 percent of the surplus in excess of the minimum required by statute, of the respective company, in debentures of said international bank.~~

*Statutory Authority G.S. 58-9(1); 58-79; 58-79.1.*

**.0114 CERTIFICATES OF CONTRIBUTION**

Every domestic insurance company may, upon petition to the Commissioner and upon receipt of his approval thereof, issue certificates of contribution of surplus for the reasons and purposes set forth in the petition to the Commissioner.

Approval of the issuance of certificates of contributions may be granted only upon the following conditions and will be effective only as to transactions performed in conformity therewith:

- (1) No certificate evidencing the contribution under authorization hereof shall be issued except substantially in the form and text of the ~~"certificate of contribution" design-~~

~~nated as 11 NCAC 11A .0479 as may be approved by the Commissioner.~~

- (2) No commission, selling or other expense is to be paid or incurred in respect to any transaction authorized, except that regular salaried employees of the petitioner may perform any and all acts necessary, convenient or advisable in connection with the transactions authorized, fees may be paid for legal counsel, accounting and related services, and petitioner may incur and pay other normal expense incurred in connection with the issuance of the certificates of contribution.
- (3) No advertisement, prospectus, or other writing relating to the certificates of contribution, except regular business correspondence relating to specific problems peculiar to the parties thereto, shall be issued, circulated or published until after the same has been filed with and authorized in writing by the Commissioner.
- (4) At any time upon the request of the Commissioner and in any event within 30 days from and after the issuance of any certificate of contribution and after the completion of the transactions authorized, petitioner shall make and file with said commissioner its verified report setting forth the transactions accomplished pursuant to the authority granted, and setting forth the date of issuance of the certificate of contribution, the proceeds derived therefrom and the disposition of such proceeds, and petitioner shall attach to such report a conformed copy of the contribution certificates issued pursuant to said authorization.
- (5) In any financial statement required by law to be filed by petitioner with ~~any public officer~~ the Commissioner, or which may be published or distributed by petitioner, the principal sum of and accrued interest of these and any other outstanding certificates of contribution, which has not become a liability in accordance with the terms thereof and is not reported in such financial statement as a liability, shall be reported according to the instructions for completing the appropriate annual NAIC financial statement blank identified by ~~11 NCAC 11E .0102~~. Such amount shall be reported on the appropriate line on page 3 of the ~~annual~~

financial statement either as "contribution certificates", "outstanding contribution certificates", or "certificates of contribution". Other descriptions, such as "debentures", "surplus notes", "guaranty fund", or "guaranteed certificates", are deemed misleading and are not permitted.

- (6) The Commissioner may, from time to time, for cause amend, continue or alter his approval or temporarily suspend the rights of the petitioner hereunder or may revoke this authority.
- (7) Unless revoked, suspended, or amended or continued upon due petition therefor filed before the expiration date hereof the authority granted hereunder is valid for a period of five years and such authority shall automatically terminate on the close of business on the last day of the month in which this authority was originally granted.

Certificates of contribution issued hereunder are not to be construed as guaranty fund certificates as specifically provided for under N.C.G.S. 58-87 and 58-96 G.S. 58-12-1 and 58-8-20.

*Statutory Authority G.S. 58-2-40; 58-7-163.*

#### **.0115 VALUATION OF BONDS AND OTHER EVIDENCES OF DEBT**

~~The provisions of N.C.G.S. 58-80 with respect to the valuation of bonds or other evidences of debt having a fixed term and rate held by any life insurance company, or fraternal benefit association are deemed in every way applicable to such bonds and other evidence of debt held by all other insurance companies licensed to do business in this state and which are subject to the provisions of Chapter 58, insurance laws of North Carolina.~~

*Statutory Authority G.S. 58-80.*

#### **.0116 AMORTIZED VALUES OF BONDS OR OTHER EVIDENCES OF DEBT**

~~For the purpose of calculating amortized values of bonds or other evidences of debts pursuant to the provisions of G.S. 58-80, the Commissioner has determined that acceptable methods of calculating such amortized values are either the "straight line" method or the "scientific" method of amortization, whichever is deemed most appropriate by the respective insurers.~~

*Statutory Authority G.S. 58-80.*



**.0117 CONFLICT OF INTEREST  
STATEMENTS MUST BE EXECUTED  
ANNUALLY**

Conflict of interest statements ~~in the form designated as 11 NCAC 11A .0478~~ shall be executed annually by the officers, directors, trustees, attorneys-in-fact, and administrative personnel of every domestic insurance company.

Any conflicts of interest disclosed thereon shall be presented to the board of directors or trustees of the company for a determination of its acceptability or the remedial disposition thereof.

*Statutory Authority G.S. 58-2-40.*

**.0118 COLLECTION PROCEDURES FOR  
EXAMINATION EXPENSE**

(a) Each examiner will periodically prepare an "Examiner's Expense and Days Worked Report" for examinations of each insurance company. An examiner participating on the examination of a foreign insurance company will forward the originals of the reports to the Commissioner of ~~Insurance~~ periodically and retain copies for the examiner's own record. The examiner-in-charge on the examination of domestic insurance companies will approve and forward the originals of each examiner's reports to the Commissioner periodically and retain one copy of each report for his records.

(b) Upon verification of the examiner's expense reports, the Commissioner or his designee shall prepare an invoice and periodically bill the insurance companies for charges for days worked, as well as the expense charges for each examiner. All invoices for expenses and daily work charges are to be billed directly by the Department of ~~Insurance~~ to the company under examination. The company is directed by the invoice to submit its payments ~~direct~~ directly to the Department of ~~Insurance~~ to the company under examination. The company is directed by the invoice to submit its payments direct to the Department of ~~Insurance~~ for both expenses and charges for days worked and to make checks payable to the Department of Insurance.

(c) All funds received from daily charges are for the sole purpose of funding the direct and indirect cost of operations of the ~~examination unit~~ Field Audit Section of the Financial Evaluation Division of the Department. All charges are to be determined on a formula basis, to be adjusted from time to time as need and circumstances require.

*Statutory Authority G.S. 58-2-40; 58-2-133(c).*

**.0121 STOCK OPTIONS: GENERAL**

~~Domestic companies desiring to sell or purchase stock may do so in accordance with the following rules.~~

~~However, the following rules shall not restrict the purchase of options which are permitted under the provisions of N.C.G.S. 58-79(a)(14).~~

*Statutory Authority G.S. 58-79; 58-79.1.*

**.0123 PURCHASE OF EXCHANGE:  
TRADED CALL OPTIONS**

~~An insurer may purchase an exchanged traded call option only through an exchange and only for the purpose of a closing purchase transaction. An insurer may purchase a call on the same security upon which an option was written by the insurer. Insurers may not purchase any other options.~~

*Statutory Authority G.S. 58-79; 58-79.1.*

**.0127 SEVERABILITY**

~~If any provision of this Rule or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this Rule which can be given effect without the invalid provision or application and to this end the provisions of this Rule are declared to be severable.~~

*Statutory Authority G.S. 58-79; 58-79.1.*

**.0128 DEFINITIONS**

The following definitions are applicable to ~~Rules .0121 to .0127 of this Section~~ 11 NCAC 11C .0121 through 11C .0127:

- (1) "Call option" means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase the number of shares of the underlying stock covered by the option contract.
- (2) "Exchange" means a national securities exchange registered under the Securities Exchange Act of 1934, as amended.
- (3) "Exchange-traded" means traded on the floor of an exchange.
- (4) "Escrow receipt" means an escrow receipt issued with respect to escrowed stock held on deposit by a bank.
- (5) "Escrowed stock" means stock owned by an insurance company with respect to which an escrow receipt has been issued.
- (6) "Closing purchase transaction" means the purchase of an exchange-traded call



option, the effect of which is to reduce or eliminate the obligations of a call option writer with respect to an option contract or contracts.

- (7) "Stock" means stock owned by a domestic insurance company which was acquired subject to the provisions of ~~N.C.G.S. 58-79 and 58-79.1~~ G.S. 58-7-173.
- (8) "Underlying stock" means the stock subject to being purchased upon the exercise of a call option.
- (9) "Exercise price" means the price per unit at which the holder of an option may purchase the underlying stock upon exercise.

*Statutory Authority G.S. 58-2-40; 58-7-173.*

#### **.0129 FORM OF REPORTS OF EXAMINATION: FOREIGN COMPANIES**

The certified reports on examination prepared by the domiciliary insurance department of a foreign company as a result of a triennial examination, special examination or any other type of examination of a foreign insurance company licensed to do business in North Carolina ~~will be in the form adopted and prescribed by the National Association of Insurance Commissioners and is the only form which will be acceptable for filing in this jurisdiction~~ shall be certified.

*Statutory Authority G.S. 58-2-40; 58-2-132.*

#### **.0132 ACCOUNTING FOR SALVAGE AND SUBROGATION**

No insurance company shall take credit in any annual or interim financial statement filed with the Department for salvage or subrogation recoveries until the recoveries have been reduced to cash or its equivalent. Salvage or subrogation recoveries reduced to cash or its equivalent shall be accounted for as an offset to losses paid.

*Statutory Authority G.S. 58-2-40; 58-7-162.*

### **SECTION .0200 - INVESTMENTS**

#### **.0202 INVENTORY OF CAPITAL SURPLUS AND RESERVE INVESTMENTS**

~~Every domestic stock and mutual insurance company, other than a life insurance company or fraternal benefit association, must annually compile and maintain for review by the Commissioner a~~

~~listing of its investments made pursuant to the provisions of N.C.G.S. 58-79.1(a), (b) and (e) which comprise its minimum capital, if any, its minimum surplus and its reserve investments. Each such company shall also maintain for review a listing of all investments made pursuant to the provisions of N.C.G.S. 58-79.1(d) residue and surplus fund investments.~~

~~The listing of the investments in this Rule must be prepared in the form designated as 11 NCAC 11A .0477 or in a form substantially similar thereto.~~

*Statutory Authority G.S. 58-79.1.*

#### **.0203 FOREIGN FIRE: CASUALTY AND MISC COMPANIES: COMPLIANCE**

~~The investments of foreign or alien fire, casualty and miscellaneous insurance companies seeking admission to or already licensed in North Carolina must comply in substance with the investment requirements and limitations imposed upon like domestic companies wherever authorized to do the same kind or kinds of insurance business.~~

*Statutory Authority G.S. 58-79(d)(1); 58-79.1.*

#### **.0204 INVESTMENTS IN ELECTRONIC DATA PROCESSING EQUIPMENT**

~~It is the interpretation of this department that electronic and mechanical machines constituting a data processing and accounting system is a permissible investment for insurance companies subject to the provisions of N.C.G.S. 58-79.1 if the cost of such system is at least twenty five thousand dollars (\$25,000), but not more than two percent of its admitted assets, and if the cost thereof is amortized in full over a period not to exceed 10 calendar years.~~

*Statutory Authority G.S. 58-79.1; 58-9(1).*

#### **.0205 ACCOUNTING FOR SALVAGE AND SUBROGATION**

~~Insurance companies incorporated under the laws of this state and foreign and alien companies licensed to do business in this state shall not take credit in any annual statement or interim statement filed with this department for salvage or subrogation recoveries until such recoveries shall have been reduced to cash or its equivalent. Salvage or subrogation recoveries reduced to cash or its equivalent shall be accounted for as an offset to losses paid.~~

Statutory Authority G.S. 58-16; 58-9.

**.0206 ACCOUNTING FOR PREMIUM OVER 90 DAYS PAST DUE**

Premiums that are not more than 90 days past due are allowable as admitted assets under G.S. 58-7-162(5). For purposes of this determination, premiums are considered more than 90 days past due under any of the following conditions:

- (1) Original, deposit, and renewal premiums on policies and bonds effective more than 90 days before the date of determination.
- (2) Premiums covering endorsements on which the effective dates were more than 90 days before the date of determination.
- (3) Installment premiums due more than 90 days before the date of determination. If any installments are overdue, all of the unpaid installment premiums on the same policy or bond shall be classified as overdue.
- (4) Audit and additional earned premiums determined by audits made more than 90 days before the date of determination, or charged upon an assured's payroll statements received more than 90 days before the date of determination.
- (5) Audits and additional earned premiums determined by audits covering periods expiring more than 180 days before the date of determination. The dates when the periods expire are determined by the provisions of the insurance contract.
- (6) When original, deposit, endorsement, or audit premiums are overdue, all premiums subsequently charged on the same policies or bonds are overdue.
- (7) When original, deposit, installment endorsement, or audit premiums on a policy or bond are overdue, all premiums charged on policies or bonds issued as renewals are overdue.
- (8) Premiums resulting from an experience modification are admitted assets, provided that not more than 90 days have elapsed since the modification has been received from a rating organization; or not more than 90 days have elapsed since the modification has been calculated by the insurer. Premiums resulting from an experience modification are not admitted assets if more than 180 days have elapsed since the effective date of the policy to which they apply or if premiums on the same or prior policy are overdue in

accordance with this Rule.

- (9) Additional premiums developed through the application of a retrospective rating formula and billed to the insured in accordance with contractual provisions are admitted assets; provided that not more than 90 days have elapsed since the billing date and not more than 180 days have elapsed since the accounting date set forth in the insurance contract. Additional retrospective premiums are not admitted assets if premiums on the same or prior policy are overdue in accordance with this Rule.

Statutory Authority G.S. 58-2-40; 58-7-162(5).

**SECTION .0300 - HEALTH MAINTENANCE ORGANIZATIONS**

**.0302 INVENTORY OF RESERVE: CAPITAL AND SURPLUS INVESTMENTS**

Every domestic stock and mutual life insurance company must annually compile and maintain for review by the Commissioner a listing of its investments made pursuant to the provisions of North Carolina General Statute 58-79(a) which comprise its entire reserves, as defined by North Carolina General Statute 58-79(b)(1), its entire capital, if any, and minimum required surplus. The listing of such investments must be prepared in the form designated as 11 NCAC 11A .0475 or in a form substantially similar thereto.

Statutory Authority G.S. 58-79.

**.0303 EXPLANATION OF BASKET CLAUSE, N.C.G.S. 58-79(a)(14)**

North Carolina General Statute 58-79(a)(14) affords domestic life insurance companies further leeway in investments not authorized by statute and is generally referred to as the "Basket Clause." The Basket Clause contemplates and intends a bona fide investment of funds in securities, property, loans or otherwise for the purpose of producing life insurance income in accordance with statutory accounting practices and statutory valuation of securities procedures. The Basket Clause does not authorize as investments the tangible property, furniture, fixtures, automobiles, typewriters, calculators and other equipment used by a company in the operation of its business and which was not acquired for the purpose of producing investment income.

Statutory Authority G.S. 58-79(a)(14).

### **.0304 INVENTORY OF BASKET CLAUSE INVESTMENT**

~~Every domestic life insurance company making investments pursuant to the provisions of North Carolina General Statute 58-79(a)(14), generally referred to as the Basket Clause for leeway investments, must annually compile and maintain for review by the Commissioner a listing of all Basket Clause investments. The listing of such investments must be prepared in the form designated as 11 NCAC 11A .0476 or in a form substantially similar thereto.~~

Statutory Authority G.S. 58-79(a)(14).

### **.0305 CALCULATION OF LIMITATIONS ON BASKET CLAUSE INVESTMENTS**

~~The limitations of investments of domestic life insurance companies pursuant to N.C.G.S. 58-79(a)(14) shall be based on the last annual statement preceeding the date of the acquisition of the investment as filed with the Commissioner but subject to verification by the Commissioner that said statement is substantially correct. Should said statement be found after examination to be materially in error the limitations imposed under the Basket Clause must be adjusted accordingly in determining eligible investments thereunder.~~

Statutory Authority G.S. 58-79(a)(14).

### **.0306 LIMITATIONS UNDER BASKET CLAUSE TO PREVIOUS INVESTMENTS**

~~Any investment of a domestic life insurance company made pursuant to the provisions and limitations of N.C.G.S. 58-79(a)(14) and which was a proper and legal investment at the time it was made, will thereafter remain proper and legal regardless of circumstances affecting the percentage limitations imposed thereunder, e.g., appreciation of the investment, deterioration of surplus, etc., subject, however, to the appropriateness of the value assigned to the investment which must be valued in accordance with statutory accounting practices.~~

Statutory Authority G.S. 58-79(a)(14).

### **.0307 FEASIBILITY STUDY AND MARKET SURVEY: HMO**

(a) The applicant shall perform, or cause to be performed, a feasibility study as to the potential

success of the applicant based on the proposed plan of operation, territory to be served, extent of services to be offered by the applicant, availability of and interest by prospective providers, and interest and support by the citizenry within the area to be served by the applicant.

(b) As a part of the feasibility study, a market survey shall be conducted by qualified personnel of the applicant or, if qualified personnel are not available, the applicant may cause this survey to be conducted by a recognized health care consultant. This market survey shall realistically estimate the applicant's potential success and be based on logical and sound assumptions.

(c) The Commissioner must be satisfied that the assumptions are proven, the methodology used therein is sound and the findings indicate ample community support for, and potential success of, the applicant.

Statutory Authority G.S. 58-2-40; 58-67-10.

### **.0308 FINANCIAL CERTIFICATION: HMO**

After the applicant has performed, or caused to be performed, a feasibility study on the proposed operations of the HMO and has developed a specific plan of operation, this information shall be submitted to the applicant's staff actuary, a recognized actuarial consultant, or a recognized health care consultant for completion of an actuarial projection of the anticipated operational results for a three-year period based on the initial working capital of the applicant, any additional sources of funds to be provided, the proposed rate schedules, the expected number of enrollees during the period, and the applicant's plan of operation. This projection shall include the following:

- (1) Certification that the amount of money actually available for working capital is sufficient to carry all acquisition costs and operating expenses for at least the three-year period and that the applicant is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees on a continuing basis;
- (2) Certification that the rates to be charged by the applicant for prepaid health services are neither excessive, inadequate nor unfairly discriminatory;
- (3) Determination of an adequate reinsurance program to amply protect the applicant against large claims arising in cases of major health care needs of enrollees, if the financial condition of the applicant

- (4) requires such a program; and  
Consideration be given in the three year  
projection to the possible effects of ad-  
verse selection and over-utilization of  
services by enrollees of the applicant.

*Statutory Authority G.S. 58-2-40; 58-67-10.*

#### **.0309 ISSUANCE OF CERTIFICATES OF AUTHORITY: HMO**

(a) A certificate of authority granting the  
applicant authority to operate as an HMO shall be  
issued by the Commissioner upon payment of the  
application fee prescribed in G.S. 58-67-160 and  
upon the Commissioner being fully satisfied that  
the applicant has complied with the provisions of  
G.S. 58, Article 67 and the requirements contained  
herein, and all evidence presented indicates the  
applicant to have a reasonable potential for success  
in the operation of a health maintenance organiza-  
tion.

(b) Any material filed in accordance with G.S.  
58-67-10 that has materially changed since the  
original date of filing with the Commissioner shall  
be updated and refiled before the granting of a  
certificate of authority. The Commissioner may  
also require any additional information for review  
as he deems necessary in making the decision on  
the issuance of this certificate of authority to the  
applicant.

(c) Any applicant not domiciled in this State  
must file a power of attorney duly executed by the  
applicant appointing the Commissioner as the true  
and lawful attorney of the applicant upon whom all  
lawful process in any legal action or proceeding  
against the health maintenance organization on a  
cause of action arising in this State may be served.

*Statutory Authority G.S. 58-2-40; 58-67-10; 58-67-160.*

#### **.0310 FOREIGN HMO: SUCCESSFUL OPERATION**

(a) Foreign health maintenance organizations  
seeking admission to North Carolina must have net  
operational gains for three consecutive years next  
preceding the date of application for admission;  
however, on an individual case basis only, an  
applicant may be considered for admission if it has  
a minimum of one year of net operational gains  
and the financial certification as described in 11  
NCAC 111 .0002 reflects continuing operational  
gains for at least the next three years.

(b) The three-year operational gain requirement  
for a foreign health maintenance organization

applying for admission to North Carolina may be  
waived by the Commissioner if such organization  
can satisfy all other provisions of G.S. 58-67-10  
and the requirements contained herein and if the  
organization is a subsidiary of, or affiliated with,  
an already licensed insurance company that:

- (1) has been licensed in North Carolina for  
a minimum of 10 years;
- (2) has been successful in its insurance  
operations;
- (3) enjoys a satisfactory reputation in its  
dealings with its North Carolina policy-  
holders;
- (4) has a substantial degree of management  
control over the operations of the appli-  
cant organization; and
- (5) can provide evidence that ample funds  
will be committed by the insurance  
company in behalf of the health mainte-  
nance organization to support the poten-  
tial success of the organization for at  
least a three-year period.

*Statutory Authority G.S. 58-2-40; 58-67-10.*

#### **.0311 ADMITTED ASSETS: HMO**

For the purpose of determining the working  
capital or net worth of any HMO seeking admis-  
sion to do business in this State and of any HMO  
admitted to do business in this State, admitted  
assets for an HMO do not include:

- (1) prepaid expenses;
- (2) intangible assets;
- (3) the depreciated cost of furniture and  
equipment, except furniture and equip-  
ment directly used in providing medical  
services and electronic data processing  
equipment;
- (4) amounts receivable from affiliates that  
are outstanding for over 90 days;
- (5) amounts receivable from affiliates that do  
not have immediate resources to repay  
the debts; nor
- (6) any other assets determined by the Com-  
missioner to be of an illiquid nature,  
other than real property.

*Statutory Authority G.S. 58-2-40; 58-2-40(1); 58-67-20; 58-67-110(b).*

#### **.0312 REINSURANCE AGREEMENTS: HMO**

Reinsurance Agreements entered into in accor-  
dance with G.S. 58-67-110(e) shall be issued by  
insurance carriers licensed to do business in North  
Carolina.

Statutory Authority G.S. 58-2-40; 58-67-110(e).

**.0313 EXPANSION OF SERVICE AREA: HMO**

(a) Applications for expansion of service area shall provide current data stated in G.S. 58-67-10(c)(1) along with a feasibility study and market survey of the proposed area as stated in 11 NCAC 111 .0001.

(b) Applications for expansion of service area must demonstrate at least a minimum of one year of net operational gains by the applicant in the current approved service area.

(c) The requirement of Paragraph (b) may be waived by the Commissioner if additional capital as determined by the Commissioner is placed in the HMO, or if a guaranty agreement approved in writing by the Commissioner, to pay for any loss to enrollees claiming reimbursement due to the insolvency of the HMO is made. In order to qualify, the guaranteeing organization shall:

- (1) submit to the jurisdiction of this State for actions arising under the guarantee;
- (2) submit certified, audited annual financial statements to the Commissioner; and
- (3) appoint the Commissioner to receive service of process in this State.

Statutory Authority G.S. 58-2-40; 58-67-10.

**.0314 FINANCIAL STATEMENTS: HMO**

The annual and quarterly financial reports to be filed by HMOs shall be on the HMO Blank as adopted by the National Association of Insurance Commissioners and shall use such instructions for the HMO Blank as may be adopted by the National Association of Insurance Commissioners.

Statutory Authority G.S. 58-2-40; 58-67-55.

**.0315 SIGNIFICANT MODIFICATION TO OPERATIONS: HMO**

(a) Notification of Significant Modifications of the Operations of an HMO as stated in G.S. 58-67-10(d)(1) and Paragraph (b) of this Rule shall be made to the Financial Evaluation Division of the Department.

(b) Significant modifications of the operations of an HMO shall also include, but not be limited to:

- (1) Changes in provider panels that would affect more than 10 percent of the HMO's panel;
- (2) Expenditures of capital in excess of one hundred thousand dollars (\$100,000) or

two percent of the HMO's statutory net worth, whichever is less;

- (3) Changes in contract forms that modify elements of risk, or address issues set forth in the application for a certificate of coverage or any amendments thereof, which contract forms include but are not limited to, provider contracts, subcontracted provider agreements, master group forms, administrative service agreements, and management contracts; and
- (4) The addition of or deletion of types of lines of business that an HMO engages in, including but not limited to, HMO group and individual benefit plans, point of service plans, dual option plans, triple option plans, medicare supplement or wrap around plans, medicaid plans, conversion plans, administrative services only arrangements, third party administration plans, preferred provider organization plans, the offering of the HMO through a third party to groups, and any arrangement that has the potential of increasing the liability exposure of the HMO or an affiliate.

Statutory Authority G.S. 58-2-40; 58-67-10(d)(1).

**.0316 SERVICE AREA DEFINITION: HMO**

Service area for an HMO is the geographic area approved by and on file with the Commissioner. It is the only area in which:

- (1) an HMO may enroll members who either reside therein or work therein;
- (2) an HMO may contract with providers for the provision of health care services; and
- (3) an HMO may market its products.

Statutory Authority G.S. 58-2-40; 58-67-10; 58-67-35.

**.0317 SINGLE SERVICE DEFINITION: HMO**

A single service HMO is an HMO that undertakes to provide or arrange for the delivery of only a single type of health care service to enrollees on a prepaid basis, except for enrollees' responsibility for copayments and deductibles.

Statutory Authority G.S. 58-2-40; 58-67-5; 58-67-20; 58-67-25.

SECTION .0400 - MORTGAGE  
GUARANTY INSURANCE

.0403 ACCOUNTING FOR MORTGAGE  
GUARANTY INSURANCE

(a) The financial statement required by ~~G.S. 58-21~~ G.S. 58-2-165 shall be furnished on the NAIC Fire and Casualty Annual Statement Blank designated in 11 NCAC 11A .0411. Expenses shall be recorded and reported in accordance with the "Uniform Classification of Expenses of Fire and Marine Casualty and Surety Insurers."

(b) The unearned premium reserve shall be computed as follows:

- (1) The unearned premium reserve for premiums paid in advance annually shall be calculated on the monthly pro rata fractional basis.
- (2) Premiums paid in advance for 10 year coverage shall be placed in the unearned premium reserve and shall be released from this reserve as follows:
  - (A) first month -- 1/132;
  - (B) 2nd through 12th month -- 2/132 each month;
  - (C) 13th month -- 3/264;
  - (D) 14th through 120th month -- 1/132 per month;
  - (E) 121st month -- 1/264.
- (3) Premiums Paid in Advance for Periods in Excess of 10 Years. During the first 10 years of coverage the unearned portion of the premium shall be the premium collected minus an amount equal to the premium that would have been earned had the applicable premium for 10 years coverage been received. The premium remaining after 10 years shall be released from the unearned premium reserve monthly pro rata over the remaining term of coverage.

(c) Fifty percent of the premium remaining after establishment of the premium reserve specified in Paragraph (b) of this Rule, shall be maintained as a special contingency reservation of premium and reported in the financial statement as a liability.

(d) The case basis method shall be used to determine the loss reserve, which shall include a reserve for claims reported and unpaid and a reserve for claims incurred but not reported.

*Statutory Authority G.S. 58-2-40; 58-2-165.*

SECTION .0500 - REINSURANCE

.0501 ACCREDITED REINSURER -  
APPLICATION

(a) Each insurance company desiring a status of accredited reinsurer in this jurisdiction must file an Application for Accredited Reinsurer in the form described in 11 NCAC 11A .0494 and must satisfy the requirements of G.S. 58-7-21(b)(2).

(b) Each applicant must reflect verifiable policyholders' surplus of at least twenty million dollars (\$20,000,000) in its most recent annual financial statement that presents the applicant's assets, liabilities, policyholders' surplus, income, and expenses in substantial compliance with appropriate NAIC Annual Statement Instructions, G.S. 58, and this Title. However, an insurance company may be considered for accredited reinsurer status with policyholders' surplus of less than twenty million dollars (\$20,000,000) if the application includes proper support that adequate protection to ceding insurers will be provided by the lesser amount of policyholders' surplus.

*Statutory Authority G.S. 58-2-40; 58-7-21-(b)(2).*

.0502 ACCREDITED REINSURER - FILING  
REQUIREMENTS

(a) Each initial application for accredited reinsurer shall be accompanied by the following financial and general information so that verification of the applicant's qualifications may be accomplished:

- (1) Annual statements for the preceding two years in the form required under G.S. 58-2-165;
- (2) A certified copy of the applicant's latest Report on Examination;
- (3) A copy of the applicant's CPA report for the most recent year;
- (4) Actuarial certification of the applicant's loss reserves and loss adjustment expense reserves for the most recent year; and
- (5) A certificate of compliance from the home state verifying that the applicant is licensed in at least one state.

(b) Each insurance company accepted as an accredited reinsurer must file on or before March 1 of each year the following information for review and determination of continued acceptability for such status:

- (1) An Application for Accredited Reinsurer for the next fiscal year beginning July 1;
- (2) The applicant's annual statement for the preceding year ended December 31 in

- the form required under G.S. 58-2-165;
- (3) The applicant's CPA report for the preceding year ended December 31;
  - (4) Certification of the applicant's loss reserves and loss adjustment expense reserves in such form as required by the NAIC Annual Statement Instructions except as amended by the Commissioner by rule or directive for the preceding year ended December 31; and
  - (5) A current certificate of compliance.

Statutory Authority G.S. 58-2-40; 58-7-21(b)(2).

### **.0503 ACCREDITED REINSURER - REVOCATION OF ACCREDITATION**

The Commissioner may revoke the accreditation of a reinsurer if its policyholders' surplus falls below twenty million dollars (\$20,000,000) and its continued status as an accredited reinsurer is deemed to present a condition that is hazardous to the insurance public of North Carolina.

Statutory Authority G.S. 58-2-40; 58-7-21(b)(2).

## **SECTION .0600 - PREMIUMS IN THE COURSE OF COLLECTION**

### **.0601 DEFINITIONS**

The definitions contained in G.S. 58-19-5 are incorporated into this Section by reference.

Statutory Authority G.S. 58-2-40; 58-7-162.

### **.0602 APPLICABILITY**

G.S. 58-7-162(6) applies when a person solely or in combination with the person's affiliates owes, in any two of three consecutive months, an insurer an amount that exceeds five percent of the insurer's total premiums in course of collection.

Statutory Authority G.S. 58-2-40; 58-7-162.

### **.0603 COMPLIANCE-TRUST ACCOUNT**

(a) When G.S. 58-7-162(6) applies under 11 NCAC 11C .0602, the premiums collected by the person or the person and its affiliates and not remitted to the insurer may be held in a trust account with a bank so that those premiums will qualify as allowable or admitted assets.

(b) The trust account shall be an account held in the trust department of a bank and evidenced by a written trust agreement that is in substantial compliance with the Department's Model Trust Agree-

ment.

(c) The trustee bank shall be a national bank or a state chartered bank that is a member of the Federal Deposit Insurance Corporation and be independent from control of either the person, the person's affiliates, or the insurer.

(d) The trust account must be established within 60 days after the end of the month in which the insurer becomes subject to G.S. 58-7-162(6) under 11 NCAC 11C .0602. The trust agreement must be submitted to and approved by the Commissioner before becoming effective, and within that 60-day period.

(e) The person and its affiliates must maintain separate trust accounts, evidenced by written trust agreements, for each insurer subject to G.S. 58-7-162(6).

(f) Once a trust account is established, it shall be maintained:

- (1) for as long as the person or its affiliates produce business for the insurer, regardless of whether the person or its affiliates continue to owe the insurer at least five percent of the insurer's total premiums in course of collection; or
- (2) until the insurer requests and receives authority from the Commissioner to cease using the trust account for the person or its affiliates. Such request shall not be made before 12 months after establishing the trust account.

Statutory Authority G.S. 58-2-40; 58-7-162.

### **.0604 COMPLIANCE: LETTER OF CREDIT**

(a) When G.S. 58-7-162(6) applies under 11 NCAC 11C .0602, the premiums collected by the person or the person and its affiliates and not remitted to the insurer may be secured by an unexpired, clean, irrevocable letter of credit, payable to the insurer, so that those premiums will qualify as allowable or admitted assets.

(b) The amount of the letter of credit shall at all times equal or exceed 125 percent of the liability of the person or the person and its affiliates to the insurer for the premiums collected.

(c) The letter of credit must be issued within 30 days after the end of the month in which the insurer becomes subject to G.S. 58-7-162(6) under 11 NCAC 11C .0602. A certified copy of the executed letter of credit shall be provided to the Commissioner.

(d) The letter of credit shall be issued by a banking institution whose financial condition has been determined by either the Commissioner or the



Securities Valuation Office of the NAIC to be acceptable to issue such a letter of credit.

*Statutory Authority G.S. 58-2-40; 58-7-162.*

**.0605 COMPLIANCE: FINANCIAL GUARANTY BOND**

(a) When G.S. 58-7-162(6) applies under 11 NCAC 11C .0602, the premiums collected by the person or the person and its affiliates and not remitted to the insurer may be secured by a financial guaranty bond acceptable to the Department, payable to the insurer, so that those premiums will qualify as allowable or admitted assets.

(b) The amount of the financial guaranty bond shall at all times equal or exceed 125 percent of the liability of the person or the person and its affiliates to the insurer for the premiums collected.

(c) The financial guaranty bond must be issued within 30 days after the end of the month in which the insurer becomes subject to G.S. 58-7-162(6) under 11 NCAC 11C .0602. A certified copy of the executed financial guaranty bond shall be provided to the Commissioner.

*Statutory Authority G.S. 58-2-40; 58-7-162.*

**SUBCHAPTER 11D - PROXY: LIQUIDATION AND MERGER**

**SECTION .0100 - GENERAL PROVISIONS**

**.0104 APPLICABILITY OF LAWS AFTER REVOCATION OR SUSPENSION**

If the Commissioner of Insurance of this state revokes or suspends the license of a foreign insurance company to do any new business in this state, said company shall remain subject to the provisions of Chapter 58 of the General Statutes of North Carolina for the intent and purpose of properly servicing the existing business within this state. Specifically, such company having been suspended from doing any new business in this state, shall remain subject to the provisions of Article ~~47B~~ 48, "Insurance Guaranty Association Act" and Article ~~47C~~ 62, "North Carolina Life and Accident and Health Insurance Guaranty Association Act," whichever is applicable.

*Statutory Authority G.S. 58-2-40; 58-3-90.*

**.0105 REVOCATION OF LICENSE OF RECIPROCAL INSURER**

~~The license of a reciprocal insurer may be revoked or suspended after at least 20 days written~~

~~notice to the attorney in fact so that he may appear and show cause why such action should not be taken.~~

~~If the license of a foreign reciprocal insurer is revoked or suspended by the Commissioner, notice of such revocation or suspension shall be given in the manner and form prescribed by 11 NCAC 11D .0103 and 11 NCAC 11A .0456 respectively.~~

*Statutory Authority G.S. 58-147.*

**.0106 EXTENSION FOR ELIMINATION: IMPAIRMENT OF CAP AND SURPLUS**

~~At the expiration of the period set by the Commissioner pursuant to North Carolina General Statute 58-77(10) to eliminate an impairment of a domestic company's capital and/or surplus, but not more than 90 days, and such impairment has not been eliminated, the Commissioner shall revoke the authority of the domestic company to transact any new business and the Commissioner may enter an order for rehabilitation or liquidation or grant an extension of time not to exceed an additional 30 days. If an extension is allowed and the impairment is not eliminated at its expiration, the Commissioner shall enter an order for either rehabilitation or liquidation as he deems appropriate under the circumstances.~~

*Statutory Authority G.S. 58-77(10); 58-82.*

**.0108 NOTICE OF HEARING ON PLAN OF EXCHANGE OF CAPITAL STOCK**

~~Notice of a public hearing upon the terms, conditions and provisions of a plan of exchange of capital stock shall be published and mailed in accordance with the provisions of North Carolina General Statute 58-86.4 and shall be in the form designated as 11 NCAC 11A .0480 G.S. 58-9-5.~~

*Statutory Authority G.S. 58-2-40; 58-9-5.*

**.0109 CHARGES FOR HEARING CONDUCTED PURSUANT TO G.S. 58-9-5**

The costs of a public hearing, and the department's preliminary work relative thereto, shall be assessed upon the petitioners on the basis specified in the plan of exchange for any expenses incurred therefor. The Department will be reimbursed for the total number of man days expended for preliminary work and for the actual hearing and the amount charged shall be at the same rate charged to insurance companies for the examina-



tion of their books and records pursuant to ~~11 NCAC 11C .0118.~~

*Statutory Authority G.S. 58-2-40; 58-9-5.*

**.0111 CERTIFICATE OF INCORPORATION AND AMENDMENTS: APPROVAL**

To insure compliance with the provisions of Article 14 ~~26~~ of Chapter 58, the certificate of incorporation of a proposed domestic title insurance company must be approved by the Commissioner before filing with the Office of the Secretary of State.

In order that the corporate files of the Department of Insurance will properly reflect the corporate changes of a domestic title insurance company, all amendments to the certificate of incorporation must be approved by the Commissioner before filing with the Office of the Secretary of State; ~~even though North Carolina General Statute 58-132 appears to exempt such companies from the application of the provisions of Chapter 58 except to the extent provided in Article 14.~~

*Statutory Authority G.S. 58-2-40; 58-26-1; 58-26-5.*

**.0112 DOMESTIC STOCK TITLE INS COMPANIES: CAPITAL REQUIREMENTS**

In order that the corporate files of the Department of Insurance will properly reflect all capital stock changes, domestic stock title insurance companies must comply with the provisions of ~~North Carolina General Statute 58-81 to 84; even though North Carolina General Statute 58-132 appears to exempt such companies from the application of the provisions of Chapter 58 except to the extent provided in Article 14 G.S. 58-7-105 through 58-7-120.~~

*Statutory Authority G.S. 58-2-40; 58-7-105 to 120; 58-26-5.*

**.0113 SUBSCRIBERS OF RECIPROCAL OR INTER-INSURANCE EXCHANGES**

~~The application from each subscriber required pursuant to North Carolina General Statute 58-139(6) must include an agreement that he will take the contract subscribed for by him within 30 days after the granting of a license to the reciprocal insurer by the Commissioner to exchange contracts.~~

*Statutory Authority G.S. 58-142.*

**.0114 MINIMUM REQUIREMENTS: RECIPROCAL OR INTER-INS EXCHANGES**

~~When the attorney in fact for a proposed reciprocal or inter insurance exchange maintains the central office in North Carolina it may be permitted to exchange contracts with lesser requirements than provided by North Carolina General Statute 58-139(6) subject to the following minimum requirements below which no contracts may be exchanged:~~

- ~~(1) Applications shall have been made for indemnity upon at least 50 separate risks aggregating not less than seven hundred and fifty thousand dollars (\$750,000) as represented by executed contracts or bona fide applications to become concurrently effective; or in case of liability or compensation insurance covering a total payroll of not less than seven hundred and fifty thousand dollars (\$750,000); and~~
- ~~(2) There is on deposit with the attorney in fact and available for payment of losses a sum of not less than fifty thousand dollars (\$50,000).~~

*Statutory Authority G.S. 58-139(6).*

**.0118 PROXIES: DEFINITIONS AND INSTRUCTIONS**

(a) The definitions and instructions set out in Schedule SIS, as promulgated by the ~~National Association of Insurance Commissioners, and designated as 11 NCAC 11A .0431, NAIC~~ shall be applicable for purposes of ~~these Rules~~ this Section.

(b) The terms "solicit" and "solicitation" for purposes of ~~these rules~~ shall include this Section includes:

- (1) any request for a proxy, whether or not accompanied by or included in a form of proxy; or
- (2) any request to execute or not to execute, or to revoke, a proxy; or
- (3) the furnishing of a proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.

(c) The terms "solicit" and "solicitation" shall not include:

- (1) any solicitation by a person in respect of equity security of which he is the beneficial owner;
- (2) action by a broker or other person in

respect to equity security carried in his name or in the name of his nominee in forwarding to the beneficial owner of such equity security soliciting material received from the company, or impartially instructing such beneficial owner to forward a proxy to the person, if any, to whom the beneficial owner desires to give a proxy, or impartially requesting instructions from the beneficial owner with respect to the authority to be conferred by the proxy and stating that a proxy will be given if the instructions are received by a certain date;

- (3) the furnishing of a form of proxy to a security holder upon the unsolicited request of such security holder, or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

*Statutory Authority G.S. 58-2-40.*

#### **.0145 INSIDER TRADING OF STOCK: DEFINITIONS**

(a) The following definitions contained in this Rule are applicable to insider trading of equity securities of a domestic stock insurance company as contained in 11 NCAC 11D .0145 to 11 NCAC 11D .0167.

(b) Insurer. "Insurer" means any domestic stock insurance company with an equity security subject to the provisions of ~~General Statutes 58-86.2~~ G.S. 58-7-145 and not exempt thereunder.

(c) Act. "Act" means ~~General Statutes 58-86.2~~ G.S. 58-7-145.

(d) Officer. "Officer" means a president, vice president, treasurer, actuary, secretary, controller and any other person who performs for the insurer functions corresponding to those performed by the foregoing officer.

(e) Equity Security. "Equity Security" means any stock or similar security; or any voting trust certificate or certificate of deposit for such a security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right.

(f) Securities Held of Record. "Securities held of record" shall mean:

- (1) For the purpose of determining whether the equity securities of an insurer are held of record by 100 or more persons, securities shall be deemed to be held of

record by each person who is identified as the owner of such securities on records of security holders maintained by or on behalf of the insurer, subject to the following:

- (A) In any case where the records of security holders have not been maintained in accordance with accepted practice, any additional person who would be identified as such an owner on such records if they had been maintained in accordance with accepted practice shall be included as a holder of record.
  - (B) Securities identified as held of record by a corporation, a partnership, a trust whether or not the trustees are named, or other organization shall be included as so held by one person.
  - (C) Securities identified as held of record by one or more persons as trustees, executors, guardians, custodians or in other fiduciary capacities with respect to a single trust, estate or account shall be included as held of record by one person.
  - (D) Securities held by two or more persons as co-owners shall be included as held by one person.
  - (E) Each outstanding unregistered or bearer certificate shall be included as held of record by a separate person, except to the extent that the insurer can establish that, if such securities were registered, they would be held of record, under the provisions of this Rule, by a lesser number of persons.
  - (F) Securities registered in substantially similar names where the insurer has reason to believe because of the address or other indications that such names represent the same person, may be included as held of record by one person.
- (2) Notwithstanding the provisions of Paragraph (f) (1) of this Rule:
- (A) Securities held, to the knowledge of the insurer, subject to a voting trust, deposit agreement or similar arrangement shall be included as held of record by the record holders of the voting trust certificates, certificates of deposit, receipts or similar evidences of interest in such securities; provided however, that the insurer may rely in

good faith on such information as is received in response to its request from a nonaffiliated insurer of the certificates or evidences of interest.

- (B) If the insurer knows or have reason to know that the form of holding securities of record is used primarily to circumvent the provisions of the act, the beneficial owners of such securities shall be deemed to be the record owners thereof.

(g) Class. "Class" means all securities of an insurer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges.

*Statutory Authority G.S. 58-2-40; 58-7-145.*

#### **.0146 WHO MUST FILE UNDER INSIDER TRADING OF STOCK**

Every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security of a domestic stock insurance company or who is a director or an officer of such company, shall file in the office of the Commissioner within 10 days after he becomes such beneficial owner, director or officer, a statement in such form as ~~described in 11 NCAC 11A-0454~~ prescribed by the Commissioner.

*Statutory Authority G.S. 58-2-40; 58-7-145.*

#### **.0147 WHAT MUST BE FILED UNDER INSIDER TRADING OF STOCK**

(a) The initial statements of beneficial ownership of equity securities required by 11 NCAC 11D .0147 shall be filed on ~~Form A, 11 NCAC 11A-0454~~ a form as prescribed by the Commissioner. Statements of changes in such beneficial ownership as required by G.S. ~~58-86-2~~ 58-7-145 shall be filed on ~~Form B, 11 NCAC 11A-0455~~ a form as prescribed by the Commissioner. All such statements shall be prepared and filed in accordance with the requirements of the applicable form.

(b) Any director or officer who is required to file a statement of ~~Form B, 11 NCAC 11A-0455~~ with respect to any change in his beneficial ownership of equity securities which occurs within six months after he became a director or officer of the issuer of such securities, or within six months after equity securities of such issuer first became subject to the provisions of the act, shall include in the first such statement the information called for by ~~Form B, 11 NCAC 11A-0455~~ with respect to all changes in his beneficial ownership of equity

securities of such issuer which occurred within six months prior to the date of the changes which requires the filing of such statement.

(c) Any person who has ceased to be a director or officer of an issuer which has equity securities subject to the provisions of the act, shall file a statement ~~on Form B, 11 NCAC 11A-0455~~ with respect to any change in his beneficial ownership of equity securities of such issuer which shall occur on or after the date on which he ceased to be such director or officer, or the date on which the issuer ceased to have any equity securities subject to the provisions of the act, as the case may be, if such change shall occur within six months after any change in his beneficial ownership of such securities prior to such date. The statement of ~~Form B, 11 NCAC 11A-0455~~ shall be filed within 10 days after the end of the month in which the reported change in beneficial ownership occurs.

*Statutory Authority G.S. 58-2-40; 58-7-145.*

#### **.0159 EXEMPTION OF LONG TERM PROFITS WITHIN SIX MONTHS OF OPTION**

(a) To the extent specified in Paragraph (b) of this Rule the commissioner hereby exempts as not ~~comprehended~~ contemplated within the purposes of subsection (b) of the act any transaction or transactions involving the purchase and sale, or sale and purchase, of any equity security where such purchase is pursuant to the exercise of an option or similar right either:

- (1) acquired more than six months before its exercise, or
- (2) acquired pursuant to the terms of an employment contract entered into more than six months before its exercise.

(b) In respect of transactions specified in Paragraph (a) of this Rule, the profits inuring to the insurer shall not exceed the difference between the proceeds of sale and the lowest market price of any security of the same class within six months before or after the date of sale. Nothing in this Rule shall be deemed to enlarge the amount of profit which would inure to each insurer in the absence of this Rule.

(c) The Commissioner also hereby exempts, as not ~~comprehended~~ contemplated within the purpose of subsection (b) of the act, the disposition of a security, purchased in a transaction specified in Paragraph (a) of this Rule pursuant to a plan or agreement for merger or consolidation, or reclassification of the insurer's securities, or for the

exchange of its securities, or for the securities of another person which has acquired its assets, or which is in control, as defined in Section 368(c) of the Internal Revenue Code of 1954, of a person which has acquired its assets, where the terms of such plan or agreement are binding upon all stockholders of the insurer except to the extent that dissenting stockholders may be entitled, under statutory provisions or provisions contained in the certificate of incorporation, to receive the appraised or fair value of their holdings.

(d) The exemption provided by this Rule shall not apply to any transaction made unlawful by subsection (c) of the act or by any rules and regulations thereunder.

(e) The burden of establishing market price of a security for the purpose of this Rule shall rest upon the person claiming the exemption.

*Statutory Authority G.S. 58-2-40; 58-7-145.*

#### **.0160 EXEMPTIONS: ACQUISITIONS: DISPOSITIONS PURSUANT TO MERGER**

(a) The following transactions shall be exempt from the provisions of subsection (b) of the act as not ~~comprehended~~ contemplated within the purpose of said section:

- (1) the acquisition of a security of an insurer, pursuant to a merger or consolidation, in exchange for a security of a company which, prior to said merger or consolidation, owned 85 percent or more of the equity securities of all other companies involved in the merger or consolidation except, in the case of consolidation, the resulting company;
- (2) the disposition of a security, pursuant to a merger or consolidation of an insurer which, prior to said merger or consolidation, owned 85 percent or more of the equity securities of all other companies involved in the merger or consolidation except, in the case of consolidation, the resulting company;
- (3) the acquisition of a security of an insurer, pursuant to a merger or consolidation, in exchange for a security of a company which, prior to said merger or consolidation, held 85 percent of the combined assets of all the companies undergoing merger or consolidation, computed according to their book val-

ues prior to the merger or consolidation, as determined by reference to their most recent available financial statements for a 12 month period prior to the merger or consolidation;

- (4) the disposition of a security, pursuant to a merger or consolidation, of an insurer which, prior to said merger or consolidation, held over 85 percent of the combined assets of all the companies undergoing merger or consolidation, computed according to their book values prior to merger or consolidation, as determined by reference to their most recent available financial statements for a 12 month period prior to the merger or consolidation.

(b) A merger within the meaning of this Rule shall include the sale or purchase of substantially all the assets of one insurer by another in exchange for stock which is then distributed to the security holders of the insurer which sold its assets.

(c) Notwithstanding the foregoing, if an officer, director or stockholder shall make any purchase (other than a purchase exempted by this Rule) of a security in any company involved in the merger or consolidation and any sale (other than a sale exempted by this Rule) of a security in any other company involved in the merger or consolidation within any period of less than six months during which the merger or consolidation took place, the exemption provided by this Rule shall be unavailable to such officer, director, or stockholder to the extent of such purchase and sale.

*Statutory Authority G.S. 58-2-40; 58-7-145.*

#### **SECTION .0200 - LIQUIDATION: GENERAL NATURE**

##### **.0202 REPLACEMENT POLICIES**

~~In the event of the appointment of a receiver for any insurance company licensed to do business in North Carolina, or where an insurance company licensed in this state shall become insolvent or bankrupt or shall make assignment for the benefit of its creditors, policies issued to replace the policies of such company may be written on pro rata basis to the expiration date of the replaced policy. Claims for reimbursement by agents who issue replacement policies shall be evidenced by a notarized assignment of the return premium executed by the assured to whom a paid up replacement has been delivered.~~

Statutory Authority G.S. 58-9.1.

**SECTION .0300 - MERGER: GENERAL NATURE**

**.0303 NOTICE OF PUBLIC HEARING ON PLAN OF MERGER**

Written notice of the public hearing on a plan of merger or consolidation shall be given to the stockholders of the merging or consolidating companies at least 20 days before the date of the hearing.

In addition, notice shall be published by the domestic companies once a week for two consecutive weeks with the last publication date not less than 20 days before the date of the hearing and shall be published in the major morning newspapers in the Cities of Wilmington, Raleigh, Greensboro, Charlotte, and Asheville, North Carolina, and the location of the principal office of the domestic companies, if other than the aforementioned.

Both written and published notice shall be in the form designated as ~~11 NCAC 11A .0481~~ a form as prescribed by the Commissioner.

Statutory Authority G.S. 55-62; 58-2-40; 58-7-150.

**.0305 NOTICE OF PUBLIC HEARING ON PLAN OF MERGER**

Written notices of the date, time and place of the public hearing on a plan of merger or consolidation of a domestic mutual company shall be included in the notice of the special meeting of the policyholders called to vote on said plan. Notice shall also be published by the domestic companies once a week for two consecutive weeks with the last publication date not less than 20 days before the date of the hearing and shall be published in the major morning newspapers in the Cities of Wilmington, Raleigh, Greensboro, Charlotte and Asheville, North Carolina and cities wherein the principal offices of the domestic companies are located, if other than the aforementioned. Published notice shall be in the form designated as ~~11 NCAC 11A .0481~~ a form as prescribed by the Commissioner.

Statutory Authority G.S. 58-2-40; 58-7-150.

**SUBCHAPTER 11E - TAX AND MISCELLANEOUS**

**SECTION .0100 - GENERAL PROVISIONS**

**.0102 ANNUAL STATEMENTS TO BE FILED WITH DEPARTMENT OF INSURANCE**

~~For compliance with the annual reporting requirements of Chapters 57, 57A and 58 of the General Statutes the Department requires the use of the annual statement forms adopted by the National Association of Insurance Commissioners for each year's end, and as amended and revised from time to time, for the following types of companies and in the forms designated in this Rule for each type annual statement:~~

- ~~(1) Life and Accident and Health Annual Statements Blank: 11 NCAC 11A .0415;~~
- ~~(2) Fire and Casualty Annual Statement Blank: 11 NCAC 11A .0411;~~
- ~~(3) Title Annual Statement Blank: 11 NCAC 11A .0419;~~
- ~~(4) Fraternal Annual Statement Blank: 11 NCAC 11A .0424;~~
- ~~(5) Hospital, Medical and Dental Service or Indemnity Corporation Annual Statement: 11 NCAC 11A .0422;~~
- ~~(6) Health Maintenance Organization Annual Statement Blank: 11 NCAC 11A .0491.~~

~~In addition, the Department will require the use of any new annual statement forms adopted subsequent to this date by the National Association of Insurance Commissioners for any other types of companies.~~

Statutory Authority G.S. 57-9; 58-9(3); 58-21; 58-134; 58-292; 57A-9; 57A-21.

**.0103 INSTRUCTIONS FOR COMPLETION OF ANNUAL STATEMENT FORMS**

~~For completion of the annual statement forms required under 11 NCAC 11E .0102, the applicable instructions adopted by the National Association of Insurance Commissioners as set forth in this Rule with its designated form number, as well as all other applicable rules adopted by this department, must be followed in completing and filing the annual statement forms:~~

- ~~(1) Instructions for completing Life and Accident and Health Annual Statement Blank: 11 NCAC 11A .0416;~~
- ~~(2) Instructions for completing Fire and Casualty Annual Statement Blank: 11 NCAC 11A .0412;~~
- ~~(3) Instructions for completing Title Annual Statement Blank: 11 NCAC 11A .0420;~~
- ~~(4) Instructions for completing Fraternal Annual Statement Blank: 11 NCAC 11A .0425;~~

- (5) — Instructions for completing Hospital, Medical and Dental Service or Indemnity Corporation Annual Statement Blank: 11 NCAC 11A .0423;
- (6) — Instructions for Health Maintenance Organization Annual Statement Blank: 11 NCAC 11A .0492.

In addition, the Department will require the use of any new instructions adopted subsequent to this date by the National Association of Insurance Commissioners which are applicable to any new annual statement blank.

*Statutory Authority G.S. 58-9(3); 57A-9; 57A-21.*

#### **.0104 FORM OF QUARTERLY FINANCIAL STATEMENTS**

When financial statements other than on an annual basis are required to be filed with this department, the quarterly financial statement forms adopted by the National Association of Insurance Commissioners for the respective type of company as set forth below must be used to comply with such other reporting requirements:

- (1) — Life and Accident and Health Quarterly Statement Blank: 11 NCAC 11A .0417;
- (2) — Fire and Casualty Quarterly Statement Blank: 11 NCAC 11A .0414;
- (3) — Title Quarterly Statement Blank: 11 NCAC 11A .0421;
- (4) — Fraternal Quarterly Statement Blank: 11 NCAC 11A .0426;
- (5) — Health Maintenance Organization Quarterly Statement Blank: 11 NCAC 11A .0493.

In addition, the Department will require the use of any new quarterly statement forms adopted subsequent to this date by the National Association of Insurance Commissioners for any other types of companies.

*Statutory Authority G.S. 58-9(3); 57A-9; 57A-21.*

#### **.0105 APPLICABILITY OF FINANCIAL STATEMENTS**

Financial statements or information prepared on a basis other than statutory accounting practices filed with the Commissioner shall not satisfy the filing or reporting requirements of any law or ruling requiring such financial statements or information nor shall such differing statements or information be used as the basis of a citation for a violation of any law or ruling. Where such differing financial statements or information are appropriate for the requirements of any other state or

federal regulatory agency, e.g., S.E.C., I.R.S., it is permissible for a company to submit such differing statements in conjunction with the submission of the statutory financial statements or information, together with an appropriate reconciliation with the insurer's required statutory statements.

*Statutory Authority G.S. 58-34.1.*

### **SECTION .0200 - FIRE AND CASUALTY: GENERAL NATURE**

#### **.0201 GENERAL NATURE**

The Fire and Casualty Section of the tax, audit and statistical operation unit contains all the rules applicable to that section.

*Statutory Authority G.S. 58-9.*

#### **.0202 TAX ON RECEIPTS FOR PREMIUMS**

Article 1 of Chapter 118 of the General Statutes of North Carolina makes provision for the payment of a "Firemen's Relief Fund Tax" of one-half of one percent by fire insurance companies, corporations and associations.

The references therein contained are interpreted to impose such tax on fire, lightning and automobile fire and lightning premiums and must be paid by any company writing such lines whether such companies are fire or casualty companies.

*Statutory Authority G.S. 58-2-40; 118-2.*

#### **.0203 PREMIUM FINANCE CHARGES**

Premium finance charges are considered to be a part of the premium charge for premium tax purposes and are to be included as part of the gross premiums as defined in G.S. 105-228.5.

*Statutory Authority G.S. 58-2-40; 105-228.5.*

### **SECTION .0300 - LIFE: GENERAL NATURE**

#### **.0303 PREMIUM TAXES ON ANNUITIES**

Every life insurer, in computing its premium taxes on gross premiums, after giving due consideration to the exemptions as specified in G.S. 105-228.5, may pay premium taxes on premiums for the purchase of annuities at such time as the contract holder elects to commence annuity benefits.

(a) Rollovers of annuity contracts within the same insurance company are not taxable. Roll-

overs of annuity contracts into another insurance company are taxable.

(b) Additional premiums received by an insurance company on or after January 1, 1988, for annuity contracts begun prior to that date are taxable not when received, but only when annuitized or withdrawn. Premium tax paid in prior years on these annuity contracts may be applied against the total premium tax due when the annuity contracts are either annuitized or withdrawn.

(c) Premium tax is payable on premiums received for annuity contracts written on or after January 1, 1988, at the time the contract is subsequently annuitized or withdrawn.

(d) For purposes of this Rule, "withdrawn" means withdrawn by cash surrender, partial cash surrender, rollover into another insurance company, or death benefit, if one of these events occurs instead of annuitization.

(e) Interest earned on premiums received by an insurance company for an annuity contract is not subject to the premium tax.

(f) For annuity taxation, the legal residence of the contract holder at the time the annuity contract is purchased determines the state to which the annuity tax will be paid, regardless of the residence of the contract holder at the time of annuitization or withdrawal. North Carolina considers the premium tax on an annuity to have attached at the time the insurance company receives the premium. Only the payment of the tax is deferred until a later time. An insurance company, therefore, must report and pay to North Carolina the annuity tax on an annuity purchased by a North Carolina contract holder at the time that the contract is annuitized or withdrawn, regardless of the contract holder's state of residence at the time of annuitization or withdrawal.

*Statutory Authority G.S. 58-2-40; 105-228.5.*

#### **.0306 FINANCIAL REPORTING: DIFFERING STATEMENTS**

If a life insurer publishes financial statements prepared on a basis different from the basis of its statutory statement filed with the Insurance Commissioner they must:

- (1) Such differing statements must disclose that their basis differs from that of the insurer's statutory statements filed with the Commissioner and must, in the case of full year differing statements, be accompanied by a reconciliation of the figures in such differing statements with

figures in the insurer's statutory statements filed with the Commissioner;

- (2) Such differing statements must have been prepared on a basis which is in accordance with requirements of a competent authority, whether or not such requirements are specifically applicable to the individual insurer;
- (3) Such differing statements must, if they show an amount of surplus which differs from the amount of surplus on the basis of the insurer's statutory statements filed with the Commissioner, disclose in equal prominence the amount of statutory surplus and any restrictions on any excess of the surplus according to such differing statements over the surplus on the basis of the insurer's statutory statements filed with the Commissioner. Example of such restrictions includes statutory limitations on stockholder and policyholder dividends, since such limitations are in terms of amounts of statutory surplus only;
- (4) A copy of such differing statements must be sent to the Commissioner, for information, accompanied in the case of full year differing statements by a reconciliation of figures in such differing statements with figures in the insurer's statutory statements filed with the Commissioner;
- (5) A record of the actuarial assumptions underlying such differing statements, together with documentation of the various items of such statements, must be preserved at the insurer's home office for a period of at least five years following publication of such statements.

*Statutory Authority G.S. 58-34.1.*

#### **.0307 FINANCIAL REPORTING: FORM OF RECONCILIATIONS**

The form of reconciliations required by 11 NCAC 11E .0306(1) and .0306(4) should be generally in the forms designated as 11 NCAC 11A .0486 and 11A .0487 which may be expanded to show additional significant detail.

*Statutory Authority G.S. 58-34.1.*

#### **.0308 FINANCIAL REPORTING: DEFINITIONS**

The term "statutory statements", as used in the



rules on financial reporting, refers to financial statements prepared in a manner consistent with the manner approved by the National Association of Insurance Commissioners for purposes of the annual statement and required by the Insurance Commissioner.

The term "competent authority" as used in the rules on financial reporting shall include, but not be limited to, the Securities and Exchange Commission, the blue sky commission of any state or other political body, and any public securities exchange.

*Statutory Authority G.S. 58-34.1.*

### **.0309 FINANCIAL REPORTING: DIFFERING STATEMENTS**

If the insurer publishes financial information not based on statutory accounting principles:

- (1) — such information must (unless a change in accounting practice or policy has been adopted in the current year, in which case the change must also be disclosed) be consistent with figures in complete statements covering a full year no earlier than for insurer's latest completed fiscal year, which has been prepared and sent to the Insurance Commissioner in accordance with the requirements of these rules and
- (2) — if such information includes the insurer's surplus according to such differing statements, it must disclose with equal prominence the insurer's surplus on the basis of the insurer's statutory statement filed with the Commissioner and must indicate any restrictions on the excess (if any) of the former over the latter.

Examples of such restrictions include statutory limitations on stockholder and policyholder dividends, since such limitations are in terms of amounts of statutory surplus only.

*Statutory Authority G.S. 58-34.1.*

### **.0310 FINANCIAL REPORTING: PARENT OR AFFILIATED INSURERS**

If a life insurer's differing figures are included in financial statements or other financial information published by a parent or affiliate of the insurer, the insurer shall send to the Commissioner a copy of the published information accompanied by any reconciliation which it would have been required to send to the Commissioner if it have published similar information on its own, except that if two

or more life insurers' figures are included in the information published by the parent or affiliate company, such reconciliation may be prepared on the basis of all such insurers' figures combined.

*Statutory Authority G.S. 58-34.1.*

## **SECTION .0400 - MISCELLANEOUS: GENERAL NATURE**

### **.0402 EXTENSION OF FILING DATE**

The annual report of a hospital, medical and dental service corporation and health maintenance organizations is due on or before the first day of March of each year; however, the Commissioner may, for good and sufficient cause shown by a company, extend the filing date of such annual statement for such company, for a reasonable period of time, not to exceed 30 days.

*Statutory Authority G.S. 57-9; 57A-9; 57A-21; 58-21.*

### **.0403 RENEWAL CERTIFICATE OF AUTHORITY: HMO**

The renewal license application form for health maintenance organizations shall be filed on or before March 1 each year and in the form described in 11 NCAC 11A .0490. Such certification when issued by the Commissioner shall be effective July 1 each year. Renewal of the Certificate of Authority for health maintenance organizations shall be issued by the Commissioner and at his discretion after satisfactory completion of the following matters:

- (1) — Timely payment of the application fee as prescribed in G.S. 57A-20;
- (2) — Timely compliance with all other requirements as contained in G.S. 57 A; and
- (3) — Timely presentation to the commissioner by the applicant of evidence that the applicant has reasonable potential for successful operation of a health maintenance organization.

*Statutory Authority G.S. 57A-20; 58-9.*

### **.0404 FILING ANNUAL STATEMENTS FOR HMO'S**

The annual statement form for health maintenance organizations as described in 11 NCAC 11A .0491 shall be filed on or before March 1 each year for the preceding calendar year. The annual statement shall contain, along with other required information, an actuarial certification from a



recognized authority as to the adequacy of the reserves as required under G.S. 57A-6. Such certification must certify that the rates as currently charged by the applicant are neither excessive, inadequate nor unfairly discriminatory as set forth in G.S. 57A-8(b)(2).

*Statutory Authority G.S. 57A-6, -8(b)(2), -9.*

#### **.0405 INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT AUDITS: HMO**

Each applicant for a renewal license as a health maintenance organization in this state shall file on or before May 1 of each year with the Commissioner an audit report and management letter. Such audit report and management letter shall be compiled by the independent certified public accountant audit of the health maintenance organization. The independent certified public accountant audit shall contain, along with other pertinent information, general operations of the health maintenance organization and condition and affairs of the health maintenance organization for the preceding calendar year or fiscal year with a calendar year update.

*Statutory Authority G.S. 57A-3(c)(8).*

### **SUBCHAPTER 11F - ACTUARIAL**

#### **.0002 RESERVES ON CREDIT LIFE INSURANCE**

(a) All credit life policies issued on or after the operative date of this Rule shall maintain reserves computed in accordance with the Commissioner's 1958 Extended Term Mortality Table at three percent.

(b) The method of formulating reserves and amounts of reserves and other liabilities established by any insurance company for payment of claims under credit life insurance policies shall be in every case subject to examination and reviews of the Commissioner of Insurance.

*Statutory Authority G.S. 58-9(1); 58-143.*

#### **.0003 RESERVES ON CREDIT ACCIDENT AND HEALTH INSURANCE**

Any insurance company writing credit accident and health insurance shall maintain as minimum actuarial reserves prudent and actuarially sound reserves based upon current actuarial practices. The methods of formulating reserves and the amounts of reserves and other liabilities established by any insurance company for the payment of

claims under credit accident and health insurance policies shall be in every case subject to examination and review of the Commissioner of Insurance.

*Statutory Authority G.S. 58-9(1); 58-143.*

#### **.0004 AUDIT TRAILS ON RESERVES REQUIRED**

Every insurance company shall be required to maintain adequate reserve records in such a manner that an audit trail can easily be established and determined both in summary and detail form. Insurance in force by each mortality and interest valuation method shall be available.

*Statutory Authority G.S. 58-9(1).*

#### **.0006 RESERVES FOR PRESENT VALUE OF FUTURE BENEFITS REQUIRED**

Reserves for the present value of future benefits on accident and health policies under which continuous payments are to be made in the event of disability shall be established by the company and the minimum basis of valuation for such present value of future benefits shall be the 1964 Commissioners Disability Table at three percent or any other method which may be approved by the Commissioner of Insurance.

*Statutory Authority G.S. 58-9.*

#### **.0007 PURPOSE**

The purpose of this Rule is to recognize new mortality tables, 1983 Table "a" and 1983 GAM Table, for use in determining the minimum standard of valuation for annuity and pure endowment contracts.

*Statutory Authority G.S. 58-9; 58-201.1.*

#### **.0008 DEFINITIONS**

(a) As used in this Rule "1983 Table "a"" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June 1982 by the National Association of Insurance Commissioners.

(b) As used in this Rule "1983 GAM Table" means that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December 1983 by the National Association of Insurance Commissioners.

Statutory Authority G.S. 58-9; 58-201.1.

#### .0009 INDIVIDUAL ANNUITY OR PURE ENDOWMENT CONTRACTS

(a) ~~The 1983 Table "a" is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after April 19, 1979.~~

(b) ~~The 1983 Table "a" is to be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1987.~~

Statutory Authority G.S. 58-9; 58-201.1.

#### .0010 GROUP ANNUITY OR PURE ENDOWMENT CONTRACTS

(a) ~~The 1983 GAM Table and the 1983 Table "a" are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, either table may be used for purposes of valuation for any annuity or pure endowment purchased on or after April 19, 1979 under a group annuity or pure endowment contract.~~

(b) ~~The 1983 GAM Table is to be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 1987 under a group annuity or pure endowment contract.~~

Statutory Authority G.S. 58-9; 58-201.1.

### SUBCHAPTER 11H - CONTINUING CARE FACILITIES

#### .0001 DEFINITIONS

(a) As used in this Section, unless the context clearly indicates otherwise:

- (1) "Health related services" also means domiciliary (rest home) care or Homes for the Aged, skilled or intermediate nursing, nursing home or rest home admission, or priority admission into a facility, unit, or bed providing any of the above-named services.
- (2) "Insolvent" means a financial condition whereby a provider or facility whose admitted assets do not exceed its liabilities plus any equity levels or reserve levels as required by Article 64 or by other laws or by standardized accounting procedures or whose working capi-

tal is not sufficient to pay its obligations as they become due.

- (3) "Lodging" means independent living without the need or use of health related services.

(b) The definitions contained in G.S. 58-64-1 are incorporated into this Section by reference.

Statutory Authority G.S. 58-2-40; 58-64-1; 58-64-65.

#### .0002 LICENSE - STEPS

Continuing Care facilities must apply for licensure in accordance with the following steps:

- (1) For new or development stage facilities:
  - (a) The provider must initially submit the following items to the Commissioner for review and approval:
    - (i) The provider/sponsor names, addresses, and telephone numbers;
    - (ii) A copy of a Non-Binding Reservation Agreement form (NBRA);
    - (iii) Escrow agreement;
    - (iv) Narrative describing the facility, its mode of operation, and its location;
    - (v) Any advertising materials to be used; and
    - (vi) Any additional materials/information or ongoing periodic reporting as required by the Commissioner.
  - (b) Upon completion of step 1(a), the provider may:
    - (i) Disseminate materials describing the intent to develop a Continuing Care facility; and
    - (ii) Enter into fully refundable Non-Binding Reservation Agreements (NBRA's) for up to one thousand dollars (\$1,000.00). All funds received must be escrowed.
- (2) Start-Up Certificate:
  - (a) In order to obtain a Start-Up Certificate, the provider must submit the following to the Commissioner for review and approval:
    - (i) Application for Licensure, as required by G.S. 58-64-5(b);
    - (ii) A Disclosure Statement, as required by G.S. 58-64-20;
    - (iii) A copy of a binding Reservation Agreement or Resident Agreement;
    - (iv) A market feasibility study; and
    - (v) Any additional materials/information or ongoing periodic reporting as required by the Commissioner.

- (b) Upon issuance of the Start-Up Certificate, the provider may:
  - (i) Enter into binding Reservation Agreements or Resident Agreements;
  - (ii) Begin site preparation work; and
  - (iii) Construct model units for marketing.
- (3) Preliminary Certificate:
  - (a) In order to obtain a Preliminary Certificate, the provider must submit the following to the Commissioner for review and approval:
    - (i) An explanation of any significant differences between actual costs and projected costs contained in the Start-Up Certificate submission (not required for existing operational Continuing Care facilities that are expanding);
    - (ii) An updated Disclosure Statement;
    - (iii) Current interim financial statements;
    - (iv) Confirmation of signed agreements for at least 50 percent of the new units, reserved by a deposit equal to at least 10 percent of the entrance fee or by a non-refundable deposit equal to the periodic fee for at least two months for facilities that have no entrance fee; and
    - (v) Any additional materials/information or ongoing periodic reporting as required by the Commissioner.
  - (b) Upon issuance of the Preliminary Certificate, the provider may:
    - (i) Purchase or construct a Continuing Care facility;
    - (ii) Renovate or develop structure(s) not already licensed as a Continuing Care facility; and
    - (iii) Expand existing Continuing Care facilities in excess of 10 percent of the current number of available Independent Living Units (ILU's) and/or available health related units/beds.
- (4) Permanent License:
  - (a) In order to obtain a Permanent License, the provider must submit the following to the Commissioner for review and approval at least 60 days before the facility opening:
    - (i) An updated Application for Licensure;
    - (ii) An updated Disclosure Statement; and
    - (iii) Confirmation of signed agreements for at least 80 percent of the new units, reserved by a deposit equal to at least 10 percent of the entrance fee

- or by a non-refundable deposit equal to the periodic fee for at least two months for facilities that have no entrance fee.
- (b) Upon issuance of the Permanent License, the provider can, presuming all other legal requirements have been met or completed:
  - (i) Open the Continuing Care facility; and
  - (ii) Provide Continuing Care.
- (5) Restricted or Conditional License:
  - (a) Where applicable, the Commissioner may provide facilities exhibiting specific conditions, criteria, or hazardous financial conditions, with a Restricted or Conditional License. Reporting data, format, schedules, routines, restrictions, and conditions shall be determined by the Commissioner, and are subject to change by the Commissioner.
  - (b) Upon issuance of the Restricted or Conditional License, the provider may continue to operate the facility under the conditions or restrictions as determined by the Commissioner until such time as the Commissioner alters the conditions acceptable for continued operations, issues a Permanent License, or takes whatever other action is appropriate.

*Statutory Authority G.S. 58-2-40; 58-64-5; 58-64-65.*

#### **.0003 REVOCATION OF LICENSE**

The revocation process, as provided by G.S. 58-64-10, shall also apply to the Start-Up Certificate, the Preliminary Certificate, and the Restricted or Conditional License.

*Statutory Authority G.S. 58-2-40; 58-64-10; 58-64-65.*

#### **.0004 SALE OR TRANSFER OF OWNERSHIP**

The sale or transfer process, as provided by G.S. 58-64-15, shall also apply to the Start-Up Certificate, the Preliminary Certificate, and the Restricted or Conditional License.

*Statutory Authority G.S. 58-2-40; 58-64-15; 58-64-65.*

#### **.0005 STANDARDIZED DISCLOSURE**

### STATEMENT FORMAT

As per G.S. 58-64-20(d), the Commissioner may prescribe a standardized format for the Disclosure Statement. The format shall be maintained by the Commissioner, and may be updated as necessary.

Statutory Authority G.S. 58-2-40; 58-64-20; 58-64-65.

### .0006 HEALTH AND FINANCIAL CONDITIONS FOR ACCEPTANCE

The health and financial conditions for acceptance as a resident shall appear within the Disclosure Statement, as provided by G.S. 58-64-20(a)(8). The Disclosure Statement shall also include any conditions related to the acceptance conditions required by the provider or facility, such as age, ability to move or communicate, minimum assistance levels necessary to perform daily activities, prepared wills, and ability to pay under specified conditions.

Statutory Authority G.S. 58-2-40; 58-64-20; 58-64-65.

### .0007 FINANCIAL STATEMENTS AND COMPILED FIVE YEAR FORECASTS

Certified financial statements, as required by G.S. 58-64-20(a)(10), and compiled five year forecasts, as required by G.S. 58-64-20(a)(12), shall be of the provider's corporation or other legal entity that owns the Continuing Care facility. The Commissioner may also require the provider to supply supplementary financial data or other appropriate disclosure under the requirements of G.S. 58-64-20(a)(10) and G.S. 58-64-20(a)(12) on individual Continuing Care facilities, where a corporation or other legal entity owns various Continuing Care facilities or is engaged in various enterprises.

Statutory Authority G.S. 58-2-40; 58-64-20; 58-64-65.

### .0008 COMPILED FIVE YEAR FORECAST

(a) The compiled five year forecast shall consist of the following:

- (1) a balance sheet;
- (2) a statement of operations;
- (3) a statement of cash flows; and
- (4) a narrative detailing all significant assumptions.

(b) The balance sheet shall include individual categories or line items that sum into the following sub-totals, at a minimum:

- (1) current assets;
- (2) restricted assets, including a line item for operating reserve assets;
- (3) fixed assets, including property, plant, and equipment;
- (4) total assets;
- (5) current liabilities;
- (6) long-term debt;
- (7) total liabilities;
- (8) deferred revenue-refundable;
- (9) deferred revenue-nonrefundable;
- (10) equity or fund balance-unrestricted; and
- (11) equity or fund balance-restricted.

(c) The statement of operations shall include the following individual categories or line items, at a minimum:

- (1) monthly fee revenues;
- (2) amortization of entrance fees;
- (3) health care revenues;
- (4) investment/interest income;
- (5) contributions/gifts;
- (6) health care expenses;
- (7) operations expenses, consisting of at least maintenance, laundry, and house-keeping;
- (8) dietary expenses;
- (9) administrative expenses;
- (10) interest expenses; and
- (11) depreciation.

Statutory Authority G.S. 58-2-40; 58-64-20; 58-64-65.

### .0009 PROPOSED OR DEVELOPMENT STAGE FACILITIES

The Commissioner may apply all or part of G.S. 58-64-20(a)(14) to existing Continuing Care facilities that are expanding.

Statutory Authority G.S. 58-2-40; 58-64-20; 58-64-65.

### .0010 CONTRACT SPECIFICATION - LIVING UNIT

A "living unit," as described in G.S. 58-64-25(a)(2), means an independent living unit or a health care unit/bed, or as otherwise defined by the annual North Carolina State Medical Facilities Plan.

Statutory Authority G.S. 58-2-40; 58-64-25; 58-64-65.

### .0011 DISCLOSURE STATEMENT REVISIONS

Any provider that revises its Disclosure Statement at any time other than its annual revision in order to prevent a material misstatement of fact or due to omitting a material fact, as provided by G.S. 58-64-30, must submit the revised Disclosure Statement for the Commissioner's approval before distribution.

Statutory Authority G.S. 58-2-40; 58-64-30; 58-64-65.

#### .0012 OPERATING RESERVES

Operating reserves may be funded by investment grade securities, including: cash, invested cash, bonds, stocks, U.S. Treasury obligations, U.S. Government agencies, or by an unconditional, irrevocable letter of credit of a quality satisfactory to the Commissioner. Operating reserves shall be funded and the use of the corresponding assets shall be restricted solely for these purposes. The Commissioner may otherwise require facilities to independently escrow such reserve assets.

Statutory Authority G.S. 58-2-40; 58-64-33; 58-64-65.

\*\*\*\*\*

*Notice* is hereby given in accordance with G.S. 150B-21.2 that the N. C. Department of Insurance intends to adopt rules cited as 11 NCAC 12 .1301 - .1309.

*The proposed effective date of this action is April 1, 1993.*

*The public hearing will be conducted at 10:00 a.m. on February 8, 1993 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.*

*Reason for Proposed Action:* To provide for interpretative and substantive rules in the implementation of the Small Employer Group Health Insurance Reform Act.

*Comment Procedures:* Written comments may be sent to Rodney Finger, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Rodney Finger at (919) 733-5060 or Ellen Sprenkel at (919) 733-4529.

*Editor's Note: These Rules were filed as temporary adoptions effective December 21, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.*

## CHAPTER 12 - LIFE AND HEALTH

### SECTION .1300 - SMALL EMPLOYER GROUP HEALTH COVERAGE

#### .1301 DEFINITIONS

(a) As used in this Section, unless the context clearly indicates otherwise:

- (1) "Act" means the North Carolina Small Employer Group Health Coverage Reform Act described in G.S. 58-50-100.
- (2) "Carrier" means a small employer carrier.
- (3) "Extra eligible" means an individual who is not an eligible employee or a dependent of an eligible employee who is insured under the health benefit plan of a small employer.
- (4) "New entrant" means an eligible employee, or the dependent of an eligible employee, who becomes part of an employer group after the initial period for enrollment in a health benefit plan.
- (5) "Nonstatutory plan" means any health benefit plan subject to the Act other than the statutory plans.
- (6) "Policy anniversary" or "plan anniversary" means the annual anniversary of the issuance of a health benefit plan. If a plan is issued through a multiple employer trust, "policy anniversary" or "plan anniversary" means the annual anniversary of the issuance of the health benefit plan to the small employer.
- (7) "Previously declined group" means a group whose application for coverage was declined for any reason by a carrier after January 1, 1992, and before August 14, 1992.
- (8) "Previously declined individual" means an individual whose application for coverage for a health benefit plan was declined by a carrier before August 14, 1992.
- (9) "Producer" means an insurance agent or insurance broker licensed under Article 33 of G.S. Chapter 58.
- (10) "Statutory plan" means the basic or

standard health care plan.

(b) The definitions contained in G.S. 58-50-110 are incorporated into this Section by reference.

*Statutory Authority G.S. 58-2-40(1).*

### .1302 SCOPE

(a) Any health benefit plan is subject to the Act if it is a health benefit plan under G.S. 58-50-115(a)(1) or (2) and is not excluded from the Act by G.S. 58-50-110(11).

(b) This Section does not apply to individual health insurance policies that are not subject to G.S. 58-50-115.

(c) The Act and this Section apply to a health benefit plan provided to a small employer or to the employees of a small employer without regard to whether the health benefit plan is offered under or provided through a group policy or trust arrangement.

*Statutory Authority G.S. 58-2-40(1); 58-50-110(5); 58-50-113(a)(3); 58-50-115.*

### .1303 POLICY FORMS AND APPROVALS

All carriers must file all health benefit plan policy forms with the Department for approval before they may be used. The following procedures apply to filing those policy forms:

- (1) The filing cover letter shall include a certification by the carrier that specifies that the health benefit plan will be marketed to small employers. Each health benefit plan that will be marketed with payroll deduction shall include this certification.
- (2) Carriers are not required to file new health benefit plan policy forms. Existing policy forms may be brought into compliance with the Act by means of amendments or variable language.

*Statutory Authority G.S. 58-2-40(1); 58-50-125(b); 58-51-1.*

### .1304 COMPLIANCE

(a) Each carrier and third party administrator shall file a report on North Carolina small employer group insurance activity annually on or before March 15, which report shall describe case characteristics and numbers of health benefit plans in various categories marketed or issued to small employers. The report shall be in a format prescribed by the Commissioner.

(b) On and after August 14, 1992, each carrier

shall offer both statutory plans to any small employer whose application for coverage the carrier refused if the refusal occurred on or after January 1, 1992, but before August 14, 1992. This offer may be made at the anniversary of the declination, but not later than August 13, 1993.

(c) A carrier that offers coverage to a small employer shall offer coverage to each eligible employee and to each eligible dependent. The carrier shall provide the same health benefit plan to those employees and dependents.

(d) A carrier shall not set contribution and participation requirements for the statutory plans that are more restrictive than those for the carrier's nonstatutory plans.

(e) In applying minimum participation requirements for a small employer and in determining whether the applicable percentage of participation is met, a carrier shall not consider employees or dependents who have existing coverage, whether the coverage is through another employer-based health benefit plan, an individual health insurance policy, Medicare, or Medicaid.

(f) Each carrier shall offer both statutory plans to any small employer upon request or if the carrier is unable to issue a nonstatutory plan to the small employer applicant.

(g) A carrier shall provide an extension of benefits to any insured who is a hospital inpatient until the insured is released by the hospital if the insured's existing coverage would end during the insured's hospital stay and if replacement coverage is not available to the insured, subject to the continued payment of monthly premiums or dues by the insured.

(h) New business applications submitted to a carrier on and after September 1, 1992, shall be accompanied by a statement signed by the producer and the small employer applicant that certifies that the employer understands that the firm may elect coverage under the statutory plans. The disclosure form shall be made part of such statement. A copy of the signed statement and disclosure form must be provided to the small employer applicant. The disclosure form shall be in a form prescribed by the Commissioner.

(i) If a carrier establishes more than one class of business under G.S. 58-50-113, the carrier shall maintain at least one basic and standard health care plan in each class of business so established. Nothing in this Section prevents a carrier from offering the statutory plans through an association or multiple employer trust.

*Statutory Authority G.S. 58-2-40(1); 58-50-105;*

58-50-113; 58-50-120(c)(4); 58-50-120(c)(6); 58-50-125(d); 58-50-130(a)(2); 58-50-130(a)(5); 58-50-130(d); 58-50-130(f).

### .1305 PROHIBITED ACTS

(a) A carrier shall not unilaterally change a small employer group from one health benefit plan to another. A carrier shall not require an in-force health benefit plan risk to replace existing coverage with the basic or standard health care plans.

(b) No carrier, its agents or field representatives, a broker, nor a small employer shall discourage any employee or dependent from applying for coverage so that the small employer can be issued a more favorable premium rate or benefit package.

(c) No carrier shall set classes of employees in such a way as to exclude any employees who are eligible for insurance by definition. This Paragraph does not prevent a carrier from classifying ineligible employees or "extra-eligibles".

*Statutory Authority G.S. 58-2-40(1); 58-50-125(d); 58-50-130(a)(3).*

### .1306 REINSURANCE POOL

(a) Conditions and procedures regarding participation in and administration of the Pool shall be promulgated by the Board.

(b) Reinsurance is available for coverage of eligible employees, their dependents, or the entire small employer group under any health benefit plan issued as new business by a reinsuring carrier to an eligible small employer on and after August 14, 1992. Reinsurance is also available to eligible small employers who were refused coverage between January 1, 1992 and August 13, 1992, and were subsequently issued a statutory plan.

(c) Subject to any other restrictions of this Section, a reinsuring carrier may reinsure an eligible employee, an eligible employee's dependent, or a small employer group who has insurance coverage under any health benefit plan subject to the Act.

(d) Reinsurance is available for coverage of a late enrollee as of the effective date of his or her coverage, subject to any other restrictions of this Section.

(e) No carrier or producer shall disclose to insureds that their coverage is reinsured by the Pool.

(f) A reinsuring carrier shall apply for reinsurance within 60 days after the effective date of coverage. A reinsuring carrier's decision to reinsure a risk shall be based on the review of

underwriting taken at the time of application. The decision may not be based on the small employer group's claims that have accrued since the effective date of coverage.

(g) Reinsurance coverage may remain in effect, in the reinsuring carrier's and the Pool's discretion, as long as the reinsured coverage remains in effect. When the reinsured coverage terminates, reinsurance will be terminated.

(h) A reinsuring carrier may terminate reinsurance on an individual or a group without terminating the reinsured coverage; and that reinsuring carrier shall not thereafter apply for reinsurance for the person or persons covered.

(i) A reinsuring carrier may reinsure a previously-declined individual upon enrollment in a health benefit plan or within 60 days after that enrollment, subject to any restrictions of this Section.

(j) Any reinsuring carrier whose health benefit plan also covers extra eligibles may not reinsure the coverage of those extra eligibles.

(k) Any new entrant in a health benefit plan may be reinsured on the effective date of his or her coverage but no later than 60 days after that date, subject to any other restrictions of this Section.

*Statutory Authority G.S. 58-2-40(1); 58-50-130(b)(4); 58-50-150(a); 58-50-150(f)(5); 58-50-150(g).*

### .1307 GUARANTEED ISSUE AND RENEWAL

(a) No carrier shall decline an application for coverage under the statutory plans. A carrier may continue to issue health benefit plans other than the statutory plans.

(b) If an eligible employee commits fraud or makes material misrepresentation to a carrier, the carrier may rescind coverage for that employee. If the small employer commits fraud or makes a material misrepresentation to a carrier, the carrier may rescind coverage for that entire small employer group.

(c) The late enrollee provision in G.S. 58-50-130(a)(4) applies to all health benefit plans subject to the Act.

(d) Any health benefit plan covering an employer that by definition becomes a small employer is not subject to the Act until the next anniversary date of that plan.

(e) Any health benefit plan covering a small employer that by definition loses its status as a small employer is subject to the Act until the next anniversary date of that plan. At that time, the



carrier shall determine if the employer is by definition a small employer. If the employer is not a small employer, the carrier may terminate the plan. If the carrier does not terminate the plan, the carrier shall amend the plan with riders or endorsements to comply with requirements of statutes and rules that were not reflected in the plan before the anniversary date.

(f) Before a plan anniversary date, a small employer may request that coverage be changed from one statutory plan to another statutory plan.

(g) All health benefit plans subject to the Act that are delivered, issued for delivery, renewed, or continued in this State or covering persons residing in this State on and after August 14, 1992, must provide coverage for all eligible employees and their dependents who are willing and able to participate regardless of their health and without exclusionary riders or modifications of coverage of any kind. Carriers are not required to issue other health benefit plans subject to the Act upon request; but if such plans are issued, a carrier must issue coverage to all eligible employees and their dependents who are willing and able to participate, without exclusionary riders or modifications of coverage of any kind.

(h) Previously declined individuals shall be provided open enrollment periods in which they may enroll in the health benefit plan in force for the small employer group. This enrollment period shall be no less than 30 days and shall begin no later than the first plan anniversary date that falls on or after August 14, 1992. If a small employer chooses not to renew an existing health benefit plan on or after August 14, 1992, any subsequent carrier shall provide the open enrollment period for previously declined individuals.

(i) Previously declined individuals are not late enrollees unless they fail to enroll during their initial enrollment periods.

(j) On the next health benefit plan anniversary date that falls on or after August 14, 1992, a carrier shall remove all exclusionary riders or conditional modifications on any health benefit plan that is subject to the Act.

(k) A carrier may base termination on nonpayment of premium; and shall apply termination decisions uniformly to all of the carrier's small employer group business.

(l) A carrier is not required to issue a statutory plan to a small employer if within the prior 12 months the carrier terminated a health benefit plan of the small employer because the employer:

- (1) failed to pay the premium;
- (2) committed fraud or materially misrep-

sented information necessary to determine the group size, group participation rate, or the group premium rate; or

(3) failed to materially comply with a health benefit plan provision, including carrier requirements for employee group premium contributions.

(m) All health benefit plans subject to the Act that were delivered, issued for delivery, renewed, or continued in this State or covering persons residing in this State on or after January 1, 1992, must be guaranteed renewable, except for the reasons listed in G.S. 58-50-130(a)(3).

(n) Each carrier shall provide an open enrollment period for a new entrant to be added to the health benefit plan. The open enrollment period shall be at least 30 days in length. A new entrant who is a new eligible employee shall be added to the plan within 90 days of his or her employment. A new entrant who is a dependent shall have an open enrollment period of at least 30 days, beginning on the date he or she becomes a dependent of an eligible employee, if the eligible employee has coverage. If a new entrant does not apply for coverage by the end of the open enrollment period, he or she is a late enrollee unless he or she meets the requirements of G.S. 58-50-110(14)a, b, or c.

*Statutory Authority G.S. 58-2-40(1); 58-50-105; 58-50-125(d); 58-50-125(e)(1); 58-50-130(a); 58-50-130(h).*

### .1308 ELECTIONS BY CARRIERS

(a) If an election to be a risk assuming carrier is disapproved by the Commissioner, the carrier shall be considered a reinsuring carrier as of the date of the disapproval, unless the carrier is already so considered.

(b) An insurer that has previously notified the Commissioner that it is not a small employer carrier may enter the small employer group health insurance market upon notification to the Commissioner and the Commissioner's approval of the carrier's statutory health benefit plans; and that carrier shall be a reinsuring carrier.

*Statutory Authority G.S. 58-2-40(1); 58-50-135(a); 58-50-135(c); 58-50-150(a).*

### .1309 FAIR MARKETING STANDARDS

(a) A carrier may select those agents with whom it chooses to contract. If a carrier chooses to contract with an agent, the carrier may not terminate or refuse to renew the agency contract for any reason related to the health status, claims experi-



ence, occupation, or geographic location of the small employer groups placed by the agent with the carrier. If the agent is directing statutory plan business to the carrier, the carrier may terminate the agency contract with the Commissioner's prior approval.

(b) No carrier shall, directly or indirectly, enter into any contract, agreement, or arrangement with an agent that provides for or results in any consideration provided to an agent for the issuance or renewal of a health benefit plan to vary on account of the health status, claims experience, industry, occupation, or geographic location of a small employer group covered by the plan.

(c) Each carrier shall provide all small employers in the same class of business an equal opportunity to obtain coverage under the statutory plans.

(d) No carrier shall apply more stringent application or informational requirements for enrollment for the statutory plans than are applied for other health benefit plans offered by the carrier.

(e) No carrier shall limit or discourage any producer marketing the statutory plans.

(f) A carrier shall provide a price quote to a small employer, directly or through an authorized producer, within seven business days after receiving a request for a quote and such information necessary to provide that quote. If additional information is necessary for the quote, a carrier shall notify a small employer, directly or through an authorized producer, within five business days after receiving the additional information.

Statutory Authority G.S. 58-2-40(1); 58-50-120(c)(7); 58-50-125(f).

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**Notice** is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rules cited as 11 NCAC 14 .0502, .0505, .0603 - .0604; and repeal rules cited as 11 NCAC 14 .0301 - .0308.

**The** proposed effective date of this action is April 1, 1993.

**The** public hearing will be conducted at 10:00 a.m. on February 5, 1993 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.

**Reason for Proposed Action:** To modernize and improve the rules governing the monitoring of financial affairs of insurance companies.

**Comment Procedures:** Written comments may be sent to Ray Martinez, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Ray Martinez at (919) 733-5633 or Ellen Sprenkel at (919) 733-4529.

## CHAPTER 14 - ADMISSION REQUIREMENTS

### SECTION .0300 - HEALTH MAINTENANCE ORGANIZATIONS

#### .0301 FEASIBILITY STUDY AND MARKET SURVEY: HMO

(a) The applicant shall perform, or cause to be performed, a feasibility study as to the potential success of the applicant based on the proposed plan of operation, territory to be served, extent of services to be offered by the applicant, availability of and interest by prospective providers, and interest and support by the citizenry within the area to be served by the applicant.

(b) As a part of the feasibility study, a market survey shall be conducted by qualified personnel of the applicant or, if qualified personnel are not available, the applicant may cause this survey to be conducted by a recognized health care consultant. This market survey should realistically estimate the applicant's potential success and be based on logical and sound assumptions.

(c) The completed feasibility study and market survey shall be filed with the commissioner for consideration of the assumptions, the methodology and the results prior to proceeding with the requirements of 11 NCAC 14 .0302. The commissioner must be satisfied that the assumptions are proven, the methodology used therein is sound and the findings indicate ample community support for, and potential success of, the applicant.

Statutory Authority G.S. 57A-4.

#### .0302 CERTIFICATE OF AUTHORITY: HMO

(a) A Certificate of Authority may be preliminarily issued by the commissioner upon receipt and satisfactory review of the following:

(1) — application for Certificate of Authority;

- (2) ~~a copy of the basic organizational document, if any, of the applicant such as the articles of incorporation, articles of association, partnership agreement, or other applicable documents, and all amendments thereto;~~
- (3) ~~a copy of the bylaws, rules and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;~~
- (4) ~~biographical affidavits in the form identified in 11 NCAC 14 .0409 on each of the directors, officers, trustees and other principals of the applicant;~~
- (5) ~~a statement generally describing the HMO, its health care plan or plans, facilities and personnel;~~
- (6) ~~financial statements showing the applicant's assets, liabilities and sources of financial support;~~
- (7) ~~a description of the proposed method of marketing the plan;~~
- (8) ~~a statement reasonably describing the geographic area or areas to be served by the applicant;~~
- (9) ~~the results of the feasibility study and market survey as described in 11 NCAC 14 .0301; and~~
- (10) ~~if currently available, but in no case later than the time of the issuance of the Certificate of Authority pursuant to 11 NCAC 14 .0305:~~
  - (A) ~~a copy of any contract made or to be made between any providers and the applicant;~~
  - (B) ~~a copy of the form of evidence of coverage to be issued to the enrollees; and~~
  - (C) ~~a copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees or other organizations.~~

(b) ~~The Certificate of Authority so issued shall only permit the applicant to solicit contingent enrollee subscribers, to present the plan to employers and other groups on a contingent subscription basis and to enter into contingent contracts with providers through which health care and/or hospitals services are to be provided to enrollees and prospective enrollees of the applicant. Under no conditions may applicant accept prepayment fees or commence the normal operations of an HMO prior to the issuance of the Certificate of Authority in accordance with 11 NCAC 14 .0305.~~

*Statutory Authority G.S. 57A-3(c), -4.*

### **.0303 FINANCIAL CERTIFICATION: HMO**

~~After the applicant has performed, or caused to be performed, a feasibility study on the proposed operations of the HMO and has developed a specific plan of operation, this information should be submitted to the applicant's staff actuary, a recognized actuarial consultant or a recognized health care consultant for completion of an actuarial projection of the anticipated operational results for a three year period based on the initial working capital of the applicant, any additional sources of funds to be provided, the proposed rate schedules, the expected number of enrollees during the period, and the applicant's plan or operation. This projection should include, but not be limited to the following:~~

- (1) ~~certification that the amount of money actually available for working capital is sufficient to carry all acquisition costs and operating expenses for at least the three year period and that the applicant is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees on a continuing basis;~~
- (2) ~~certification that the rates to be charged by the applicant for prepaid health services are neither excessive, inadequate nor unfairly discriminatory;~~
- (3) ~~determination of an adequate re-insurance program to amply protect the applicant against large claims arising in cases of major health care needs of enrollees, if the financial condition of the applicant requires such a program; and~~
- (4) ~~consideration be given in the three year projection to the possible effects of adverse selection and over utilization of services by enrollees of the applicant.~~

*Statutory Authority G.S. 57A-3(c)(9), -4, -8(b)(2).*

### **.0304 RE-INSURANCE REQUIREMENTS: HMO**

~~If indicated in the financial certification as contained in 11 NCAC 14 .0303(3), the applicant shall be obligated to enter into re-insurance contracts with a solvent carrier in accordance with the adequate re-insurance program determined in and utilized for this actuarial certification.~~

*Statutory Authority G.S. 57A-4(b)(3).*

### .0305 ISSUANCE OF CERTIFICATE OF

#### AUTHORITY: HMO

(a) ~~A Certificate of Authority granting the applicant full authority to operate as an HMO shall be issued by the commissioner upon payment of the application fee prescribed in G.S. 57A-20 and upon the commissioner being fully satisfied that the applicant has complied with the provisions of Chapter 57A of the North Carolina General Statutes and the requirements contained herein, and all evidence presented indicates the applicant to have a reasonable potential for success in the operation of a health maintenance organization.~~

(b) ~~Any material filed in accordance with 11 NCAC 14 .0302 which has materially changed since the original date of filing with the commissioner shall be updated and refiled prior to the granting of a Certificate of Authority. The commissioner may also require any additional information for review as he deems necessary in making the decision on the issuance of this Certificate of Authority to the applicant.~~

(c) ~~All applicants not domiciled on this state must file a power of attorney duly executed by such applicant appointing the commissioner and his successors in office, and duly authorized deputies, as the true and lawful attorney of such applicant in and for this state upon whom all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this state may be served.~~

*Statutory Authority G.S. 57A-4, -3(c)(10).*

### .0306 FOREIGN HMO: SUCCESSFUL OPERATION

(a) ~~Foreign health maintenance organizations seeking admission to North Carolina must have net operational gains for three consecutive years next preceding the date of application for admission; however, on an individual case basis only, such applicants may be considered for admission if they have a minimum of one year of net operational gains and the financial certification as described in 11 NCAC 14 .0303 reflects continuing operational gains for at least the next three years.~~

(b) ~~The three year operational gain requirement for a foreign health maintenance organization applying for admission to North Carolina may be waived by the Commissioner if such organization can satisfy all other provisions of G.S. 57B and the requirements contained herein and if the organization is a subsidiary of, or affiliated with, an already licensed insurance company which:~~

(1) ~~has been licensed in North Carolina for~~

~~a minimum of ten years;~~

(2) ~~has been successful in its insurance operations;~~

(3) ~~enjoys a satisfactory reputation in its dealings with its North Carolina policyholders;~~

(4) ~~has a substantial degree of management control over the operations of the applicant organization; and~~

(5) ~~can provide evidence that ample funds will be committed by the insurance company in behalf of the health maintenance organization to support the potential success of the organization for at least a three year period.~~

(e) ~~Any foreign health maintenance organization which is granted a waiver pursuant to Paragraph (b) will be required to place on deposit with the Commissioner, in addition to any other required deposits for admission, securities in the amount of fifty thousand dollars (\$50,000) of the kind and nature set forth under 11 NCAC 11B .0103.~~

*Statutory Authority G.S. 57A-3; 58-150(2).*

### .0307 DEPOSIT REQUIREMENTS: HMO

(a) ~~A minimum initial deposit of twenty five thousand dollars (\$25,000) of market value eligible securities or such higher amount as may be indicated by the actuarial projection shall be required of all such applicants prior to commencing the normal operations of a health maintenance organization in this state.~~

(b) ~~The commissioner may require additional deposits of such organizations when deemed necessary for the protection of North Carolina enrollees based upon one or more of the following conditions:~~

(1) ~~The organization is operating with unsatisfactory results as determined by the commissioner from an annual statement, an interim financial statement or a report on examination;~~

(2) ~~The organization has sustained a substantial loss in working capital as reflected in an annual statement, an interim financial statement, or a report on examination; or~~

(3) ~~The organization is found by the commissioner to be in such an unsound condition that such organization is potentially unable to fulfill enrollee and provider contracts.~~

*Statutory Authority G.S. 57B-4, -6, -17, -18.*

**.0308 ADMITTED ASSETS: HMO**

~~For the purpose of determining the working capital or net worth of any HMO seeking admission to do business in this State and of any HMO admitted to do business in this State, admitted assets for an HMO do not include:~~

- ~~(1) prepaid expenses;~~
- ~~(2) intangible assets;~~
- ~~(3) the depreciated cost of furniture and equipment, except furniture and equipment directly used in providing medical services and electronic data processing equipment;~~
- ~~(4) amounts receivable from affiliates that are outstanding for over 90 days;~~
- ~~(5) amounts receivable from affiliates that do not have immediate resources to repay the debts; nor~~
- ~~(6) any other assets determined by the Commissioner to be of an illiquid nature, other than real property.~~

*Statutory Authority G.S. 58-2-40(1); 58-67-20; 58-67-110(b).*

**SECTION .0500 - ADMISSION OF A FOREIGN OR ALIEN INSURANCE COMPANY**

**.0502 ANNUAL STATEMENTS, REPORTS ON EXAMINATION**

Foreign insurance companies applying for admission to do business in North Carolina must submit for review by the Commissioner complete and certified copies of the applicable annual statements in the form required under ~~11 NCAC 11E .0102~~ G.S. 58-2-165 for the three calendar years immediately preceding the date of application for admission, together with the latest report on examination prepared by the insurance regulator of the state of domicile in the form required under ~~11 NCAC 11C .0102~~. Applicant companies should continue to submit such statements and reports in the form required as they become available throughout the admission process.

*Statutory Authority G.S. 58-2-40; 58-2-165; 58-16-5(1).*

**.0505 WAIVER OF THREE-YEAR NET OPERATIONAL GAIN REQUIREMENT**

(a) The three-year net operational gain requirement for a foreign insurance company applying for admission to do business in North Carolina may be

waived by the Department if the company meets all other requirements for admission and it is a subsidiary of, or affiliated under a holding company system, as defined in G.S. 58-19-5, with, a licensed insurance company that:

- (1) has been licensed in North Carolina for a minimum of ten years;
- (2) has been successful in its insurance operations;
- (3) enjoys a satisfactory reputation in its dealings with its North Carolina policyholders; and
- (4) has a substantial degree of management control over the operations of the applicant company.

The affiliated company must guarantee to maintain the capital and surplus of the applicant company at or above the admission requirements in North Carolina for a minimum of three years or until the applicant company can provide a report on examination that certifies three consecutive years of net gains from operations, whichever last occurs. The forms for making such a guarantee are described in Rules .0421 and .0422 of this Chapter. The affiliated company must reflect sufficient financial strength to support such a guarantee. Any applicant company that is granted a waiver of this requirement shall place on deposit with the Commissioner, in addition to any other minimum required deposits for admission, qualified securities in the amount of one hundred thousand dollars (\$100,000) of the kind and nature set forth under ~~11 NCAC 11B .0103~~ G.S. 58-5-20.

(b) On an individual case basis, a foreign life insurance company may be considered for admission if it has a minimum of one year of net operational gains and can provide a certified financial projection, prepared by an actuary, an actuarial firm, or a certified public accountant, satisfactory to the Commissioner, reflecting continuing operational gains for at least the next three years. This financial projection must contain adequate details of all ~~income~~ revenue and expense items sufficient for proper evaluation. All assumptions used in the preparation of such a projection must be included with the filing. Any applicant company that is granted a waiver under this Rule shall place on deposit with the Commissioner, in addition to any other minimum required deposits for admission, eligible securities in the amount of one hundred thousand dollars (\$100,000) of the kind and nature set forth under ~~11 NCAC 11B .0103~~ G.S. 58-5-20.

(c) A foreign fire, casualty, or fire and casualty insurance company may be considered for a waiver of the three-year net operational gain requirement

under the following conditions:

- (1) the applicant company must have been in business for at least five years under the same ultimate ownership and writing basically the same lines of business;
- (2) the applicant company must have reflected net gains from its operations for at least three of the last five years; or must reflect verifiable total statutory capital and surplus in excess of fifty million dollars (\$50,000,000) in its most recent annual statement;
- (3) the applicant company must provide certification of the adequacy of its loss and loss adjustment expense reserves, satisfactory to the Commissioner, as they pertain to the most recent annual statement; and
- (4) the applicant company must reflect verifiable total statutory capital and surplus in excess of ten million dollars (\$10,000,000) on its most recent annual statement.

Any company that is granted a waiver under this provision shall place on deposit with the Commissioner, in addition to any other minimum required deposits for admission, eligible securities in the amount of five hundred thousand dollars (\$500,000) of the kind and nature set forth under ~~11 NCAC 11B-0103~~ G.S. 58-5-20.

*Statutory Authority* G.S. 58-2-40; 58-5-20; 58-5-40; 58-16-5(2).

## **SECTION .0600 - SURPLUS LINES**

### **.0603 FINANCIAL INFORMATION REQUIRED**

Each request for surplus lines eligibility shall be accompanied by the following financial information so that verification of compliance with the eligibility requirements can be made:

- (1) annual statements for the preceding two years in the form required under ~~11 NCAC 11E-0102~~ G.S. 58-2-165 for companies licensed in at least one state in the United States;
- (2) annual financial reports for the preceding two years in the English language and in U.S. ~~dollars~~ dollar amounts for alien insurance companies;
- (3) a certified copy of the latest report on examination or, if the company is not required to be examined by any jurisdiction, a copy of the latest CPA report and

management letter;

- (4) actuarial certification of the loss reserves and loss adjustment expense reserves for the most recent year if such certification is available; and
- (5) a copy of the NAIC financial ratio (IRIS) results for the most recent year, along with an explanation for any unusual values if such tests are performed;
- (6) an alien insurer must file a copy of its United States trust agreement; and must also file with and be approved by the Nonadmitted Insurers Information Office of the NAIC to be considered for eligibility in North Carolina.

*Statutory Authority* G.S. 58-2-40; 58-2-165; 58-21-20.

### **.0604 REQUIREMENTS FOR CONTINUED ELIGIBILITY**

(a) Once a company is deemed to be eligible to write surplus lines business and is placed on the Department's list, it may remain on the list each month as long as it remains in good repute and continues to satisfy the eligibility requirements of G.S. 58-21-20(a).

(b) Any eligible company with total capital and surplus of ~~five million five hundred thousand dollars (\$5,500,000)~~ fifteen million dollars (\$15,000,000) or less must file quarterly financial statements within 45 days after the end of each quarter.

(c) All eligible companies licensed in at least one state in the United States must file annual statements each year in the form required under ~~11 NCAC 11E-0102~~ G.S. 58-2-165 by March 1 of the following year.

(d) Each eligible alien company must file annual financial reports in the English language and in U.S. ~~dollars~~ dollar amounts within six months after the close of its fiscal year.

*Statutory Authority* G.S. 58-2-40; 58-2-165; 58-21-20; 58-21-30.

## **TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

*Notice* is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Division of Environmental Management, Water Quality Section intends to adopt rules cited as 15A NCAC 8A .0303; 8B

.0205, .0207 - .0213, .0406, .0506; 8C .0005 - .0008; amend rules cited as 15A NCAC 8A .0101 - .0102, .0202, .0301 - .0302; 8B .0101 - .0102, .0108 - .0109, .0201 - .0202, .0214, .0301 - .0303, .0402, .0404, .0502; 8C .0002, .0004; 8D .0002, .0004 - .0006; and repeal rule cited as 15A NCAC 8B .0206.

(Editor's Note: The agency is proposing to renumber existing Rule 15A NCAC 8B .0205 to 15A NCAC 8B .0214.)

**The** proposed effective date of this action is May 3, 1993.

**The** public hearings will be conducted at 7:00 p.m. on the following dates and locations:

**February 15, 1993**

Archdale Bldg.  
512 N. Salisbury Street  
Raleigh, NC 27611

**February 16, 1993**

Western Piedmont Community College  
1001 Burkemont Ave.  
Morganton, NC 28655-9978

**Reason for Proposed Action:** These changes are proposed in order to establish new certification programs and classification systems for water pollution control systems requiring mandatory certification of operators due to statutory changes in 1991.

**Comment Procedures:** Written comments should be submitted to the Chairman, Water Pollution Control System Operators Certification Commission, PO Box 29535, Raleigh, NC 27626-0535. Comments must be postmarked by February 24, 1993.

**Fiscal Note:** These Rules affect the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on December 8, 1992, OSBM on December 8, 1992, N.C. League of Municipalities on December 9, 1992, and N.C. Association of County Commissioners on December 9, 1992.

## CHAPTER 8 - WATER POLLUTION CONTROL SYSTEM OPERATORS

## CERTIFICATION COMMISSION

### SUBCHAPTER 8A - AUTHORITY: ORGANIZATION: STRUCTURE: DEFINITIONS AND HEARING PROCEDURES

#### SECTION .0100 - DEFINITIONS AND ORGANIZATION

##### .0101 DEFINITIONS

(a) "Certification Commission" is the Wastewater Treatment Plant Water Pollution Control System Operators Certification Commission created by G.S. 143B-300.

(b) "Conditional Certificate" is a permanent certificate issued by the Certification Commission to an individual as the result of passing an examination administered by the Certification Commission and which is valid only for a specified type and grade of wastewater treatment water pollution control facility system. It is subject to the provisions of G.S. 90A-40(a).

(c) "Contract Operation Firm" is any commercial wastewater treatment water pollution control system operation firm contracting with wastewater treatment works water pollution control systems pursuant to G.S. 90A-45(a).

(d) "Operator in Responsible Charge" is the operator designated to fulfill the requirements of G.S. 90A-44.

(e) "Owner" is that person, firm, or corporation described in G.S. 90A-44.

(f) "Permanent Certificate" is that certificate of competence and experience issued by the Certification Commission to an individual as the result of passing an examination administered by the Certification Commission or issued by the Certification Commission by reciprocity. It is subject to the provisions of G.S. 90A-40(a).

(g) "Reciprocity Certificate" is that certification allowed under G.S. 90A-40(b).

(h) "Temporary Certificate" is that certificate issued to an individual by the Certification Commission when the conditions of G.S. 90A-40(e) are met.

(i) "Wastewater Treatment Facility" Water Pollution Control System is any facility classified under the provisions of G.S. 90A-37.

Statutory Authority G.S. 90A-37; 90A-38; 90A-40; 90A-44; 90A-45; 143B-300; 150B-2(4).

##### .0102 CREATION

The Wastewater Treatment Plant Operators Certification Commission, was created July 1, 1969, it was renamed the Water Pollution Control System Operators Certification Commission on July 10, 1991.

*Statutory Authority G.S. 143B-300.*

## .0202 DUTIES AND REQUIREMENTS

(a) Refunding of Fees. When refunding of fees becomes necessary, it will be the ~~commission's~~ Commission's responsibility or the responsibility of their designee to determine the fees or portion of fees to be refunded in accordance with 15A NCAC 8B .0502.

(b) Federal Grants-in-Aid. The Certification Commission is authorized and empowered to adopt such rules and regulations not inconsistent with the laws of the state as may be required by the federal government for grants-in-aid for programs concerned with the certification of ~~wastewater treatment plant~~ water pollution control system operators which may be made available to the state by the federal government. This is to be liberally construed in order that the state and its citizens may benefit from such grants-in-aid.

(c) Requirements for Certified Operators of Systems Permitted Under Rules Adopted by the Environmental Management Commission.

(1) The owner must submit a letter to the Certification Commission which either designates the Operator in Responsible Charge and is countersigned by this operator or the Contract Operation Firm which has been engaged to provide operational services and is countersigned by the firm. If a Contract Operation Firm has been engaged, the Contract Operation Firm must submit a letter to the Certification Commission which designates the Operator in Responsible Charge and is countersigned by both the owner and the designated operator. This (these) letter(s) must be submitted within 30 days after:

- (A) a new ~~wastewater treatment facility~~ water pollution control system is 50 percent completed.
- (B) notification of classification or change of classification of an existing ~~facility~~ system has been received; or
- (C) a new operator in responsible charge is designated.

(2) Owners are required as of October 1, 1991 to provide an appropriately

trained and certified back-up operator of the appropriate type and any grade, to serve as surrogate for the ORC set forth in Paragraph (c)(5)(B) of this Rule when the ORC is unavailable due to illness, vacation, or job related absence that is temporary in nature, not to exceed 60 days if the back-up operator holds a certificate of a lower grade than the classification of the facility and 90 days if the back-up operator holds a certificate of the same grade as the classification of the facility. If the absence of the ORC will exceed this time period, a new ORC of the appropriate type and grade must be designated for the system. The owner must submit a letter to the Certification Commission which either designates the back-up operator and is countersigned by this operator or the Contract Operation Firm which has been engaged to provide operational services and is countersigned by the firm. If a Contract Operation Firm has been engaged, the Contract Operation Firm must submit a letter to the Certification Commission which designates the back-up operator and is countersigned by both the owner and the designated operator. This (these) letter(s) must be submitted within 30 days after; and to inform the Certification Commission in writing when:

- (A) ~~an individual formerly designated as the Operator in Responsible Charge is no longer performing these duties; or the system is classified; or~~
- (B) ~~a Contract Operation Firm formerly designated to be responsible for operation and maintenance is no longer performing these duties. a new back-up operator is designated.~~
- (3) ~~A Contract Operation Firm is required to inform the Certification Commission in writing within 30 days when: The owner must inform the Certification Commission in writing when:~~
  - (A) an individual formerly designated as the Operator in Responsible Charge or the back-up operator is no longer performing these duties; or
  - (B) a Contract Operation Firm formerly designated to be responsible for operation and maintenance is no longer



- performing these duties.
- (4) A Contract Operation Firm is required to inform the Certification Commission in writing within 30 days when:
- (A) an individual formerly designated as the Operator in Responsible Charge or the back-up operator is no longer performing these duties; or
- (B) a Contract Operation Firm formerly designated to be responsible for the operation and maintenance is no longer performing these duties. This letter shall indicate the date of the change in the status of the Operator in Responsible Charge or back-up operator the Contract Operation Firm and the name of the new designee. or Contract Operation Firm as required in 8A .0202(d)(2).
- (4) (5) In order to qualify as operator-in-charge the Operator in Responsible Charge of a particular wastewater treatment facility, water pollution control system, an operator:
- (A) must possess one, or more of the certificates listed in G.S. 90A-40 Rule .0200 of this Subchapter, of a the type(s) and grade(s) at least equivalent to the types and classification(s) of the facility system;
- (B) must, if the designated ORC of a wastewater treatment facility, be responsible for, and as of October 1, 1991, must visit each class I wastewater treatment facility and spray irrigation facility at least weekly, and each class II, class III and class IV wastewater treatment facility at least daily, excluding weekends and holidays, five days per week, excluding holidays, with the exception of single-family systems, including Aerobic Treatment Units (ATU's) with a design of less than 1500 gallons per day of domestic wastewater, which shall be visited weekly and other single-family systems which shall be visited annually; and shall document visits to the facility; and
- (C) The Operator in Responsible Charge must properly manage and document daily operation and maintenance, certify monitoring and reporting information as prescribed in the permit, and reside within reasonable

proximity of the facility system, to be readily available for consultation, emergencies, regulatory agency inspection and similar matters; and

- (C) (D) may be an employee of a Contract Operation Firm so long as this employee meets all requirements in Paragraphs (c)(5)(A), and (B) and (C) of this Rule.

(d) Requirements for Certified Operators of Systems Permitted Under Rules Adopted by the Commission for Health Services or a local board of health.

- (1) The owner shall submit a letter to the local health department in which the system is located which either designates the Operator in Responsible Charge and is countersigned by this operator, or designates a Contract Operation Firm or Public Management Entity, which has been engaged to provide operational services. If a Contract Operation Firm or Public Management Entity has been engaged, the Contract Operation Firm or Public Management Entity must submit a letter to the local health department which designates the Operator in Responsible Charge and is countersigned by both the owner and the designated operator. This (these) letter(s) must be received prior to the issuance of the operation permit or within 30 days of:

- (A) notification of classification or change of classification of an existing system has been received; or
- (B) a new operator is designated.

- (2) Owners are required to provide an appropriately trained and certified back-up operator of the appropriate type and any grade for any classified wastewater treatment plant, with the exception of Aerobic Treatment Units, to serve as surrogate for the ORC set forth in Paragraph (d)(5)(B) of this Rule when the ORC is unavailable due to illness, vacation, or job related absence that is temporary in nature, not to exceed 60 days if the back-up operator holds a certificate of a lower grade than the classification of the facility and 90 days if the back-up operator holds a certificate of the same grade as the classification of the facility. If the absence of the ORC will exceed this



time period, a new ORC of the appropriate type and grade must be designated for the system.

- (3) Owners are required to inform the local health department in writing when:
  - (A) an individual formerly designated as the ORC or the back-up operator (if required) is no longer performing these duties; or
  - (B) a Contract Operation Firm or Public Management Entity, formerly designated to be responsible for operation and maintenance is no longer performing these duties.
- (4) A Contract Operation Firm or Public Management Entity must notify the local health department in writing when:
  - (A) an individual formerly designated as the ORC or back-up operator (if required) is no longer performing these duties; or
  - (B) a Contract Operation Firm or Public Management Entity formerly designated to be responsible for operation and maintenance is no longer performing these duties. This letter shall indicate the date of the change in status of the ORC or the back-up operator (if required) or the Contract Operation Firm or Public Management Entity and the name of the new designee or Contract Operation Firm or Public Management entity, countersigned by the new ORC or back-up operator (if required).
- (5) In order to qualify as Operator in Responsible Charge of a particular system an operator:
  - (A) must possess one, or more of the certificates listed in Rule .0200 of this Subchapter, of the type(s) and grade(s) at least equivalent to the type(s) and classification(s) of the system.
  - (B) must be responsible for and must visit each system as specified in 15A NCAC 18A .1961. The ORC must properly manage and document operation and maintenance; certify monitoring and reporting information as prescribed in the permit and reside within reasonable proximity of the facility to be readily available for consultation, emergencies, regulatory

agency inspections and similar matters; and

- (C) must, if the designated ORC of a wastewater treatment facility that is classified as a Class II, Class III or Class IV wastewater treatment facility, must visit each Class II, Class III and Class IV facility at least five days per week, excluding holidays. Aerobic Treatment Units (ATU's) that are used as pretreatment for subsurface disposal of domestic wastewater with a design flow of under 1,500 gallons per day shall be visited by the ORC on a monthly basis. The ORC shall document the visits made to each facility.

Statutory Authority G.S. 143B-300; 90A-37 through 90A-43.

## SECTION .0300 - HEARING PROCEDURES

### .0301 RULE MAKING PROCEDURES

The ~~Wastewater Treatment Plant~~ Water Pollution Control System Operators Certification Commission ~~adopts~~ incorporates by reference 15A NCAC 1B .0100 for the purpose of its rule making procedures.

Statutory Authority G.S. 143B-300.

### .0302 CONTESTED CASE PROCEDURES

The ~~Wastewater Treatment Plant~~ Operators Certification Commission ~~adopts~~ by reference 15A NCAC 1B .0200 for the purpose of adjudicating contested cases.

(a) Administrative hearings shall be held in accordance with G.S. 150B, and the administrative hearing procedures codified at 15 A NCAC 1B .0200 et seq., are hereby incorporated by reference including any subsequent amendments and additions.

(b) Copies of 15A NCAC 1B .0200 may be inspected at the offices of the Division of Planning and Assessment, 512 North Salisbury Street, 8th Floor, Archdale Building, Raleigh, North Carolina 27611. Copies may be obtained at the previous location or from the Rules Division of the N.C. Office of Administrative Hearings at a cost set by those offices.

Statutory Authority G.S. 143B-300; 150B-2(4).

### .0303 PETITIONS FOR REGULATORY

## ACTIVITY

(a) Any person(s) desiring to request the adoption, amendment, or repeal of a rule may make such request in a petition filed pursuant to G.S. 150B-20, addressed to the Water Pollution Control System Operators Certification Commission and mailed to the Chairman, at P.O. Box 29535, Raleigh, North Carolina, 27626-0535. Such petitions shall contain the following information:

- (1) A draft of the proposed rule or a summary of its intent.
- (2) Reasons for adoption of the proposed rule(s) and effect on existing rules and practices.
- (3) Name and address of the petitioner(s).

(b) Petitions will be placed on the agenda of the next regularly scheduled meeting of the Commission if received at least four weeks prior to the meeting. The Chairman will prepare recommended responses to petitions for the Commission's consideration. Petitions will be considered in accordance with the requirements of G.S. 150B-20.

*Statutory Authority G.S. 113-134; 143B-289A; 150B-20.*

## SUBCHAPTER 8B - CERTIFICATION OF OPERATORS

### SECTION .0100 - APPLICATION FOR EXAMINATION AND CERTIFICATION: AND NOTIFICATION OF CHANGE OF ADDRESS

#### .0101 APPLICATION FORM

(a) An application which is designed for requesting certification as a wastewater treatment plant water pollution control system operator by way of examination, temporary certification, reciprocity certification, conditional certification, or conversion from voluntary certification must be properly and accurately completed and submitted with the appropriate fee to the office of the chairman of the certification commission Certification Commission.

(b) Incomplete applications and applications not accompanied by appropriate fee and attachments cannot be processed and will be returned to the applicant.

*Statutory Authority G.S. 90A-39; 90A-42; 143B-300.*

#### .0102 APPLYING FOR EXAMINATION

(a) An application being filed for examination

shall be postmarked by the United States Postal Service at least filed with the commission 30 days prior to the date upon which the examination is scheduled to be administered and the appropriate fee must accompany the application.

(b) Upon receipt of the application by the commission Commission, the application will be reviewed by the designee(s) of the Commission for eligibility to take the examination. The applicant will be notified by letter of their eligibility and will be advised of the date, time and place of the examination. A receipt for the examination fee will accompany the letter. In cases where the applicant is ineligible for examination, he they will also be notified by letter and advised the reason of for ineligibility. The examination fee will be refunded in the event that the applicant is determined to be ineligible for the examination. A refund check for the examination fee will be prepared and forwarded under separate cover. Upon learning of ineligibility, the applicant may request a hearing before the certification commission Commission at the next regularly scheduled meeting, relative to the ineligibility, if he the applicant so desires. Such requests must be in writing and shall be submitted at least 30 days prior to the next regularly scheduled meeting.

*Statutory Authority G.S. 90A-39; 90A-42; 143B-300; 150B-23.*

#### .0108 ADDRESS FOR REQUESTING AND RETURNING APPLICATIONS

Applications are obtainable from and should be returned to: Chairman, Wastewater Treatment Plant Water Pollution Control System Operators Certification Commission, Department of Environment, Health, and Natural Resources, P. O. Box 27687 29535, Raleigh, North Carolina 27611 27626-0535.

*Statutory Authority G.S. 90A-39; 90A-42; 143B-300.*

#### .0109 REQUIREMENT FOR NOTIFICATION OF CHANGE IN ADDRESS

Holders of certificates under this program shall notify the Chairman, Wastewater Treatment Plant Water Pollution Control System Operators Certification Commission, Department of Environment, Health, and Natural Resources, P. O. Box 27687 29535, Raleigh, North Carolina 27611 27626-0535, in writing of any change in address.

Statutory Authority G.S. 90A-35; 90A-43; 143B-300.

**SECTION .0200 - EDUCATION AND EXPERIENCE FOR CERTIFIED WATER POLLUTION CONTROL SYSTEM OPERATORS**

**.0201 GRADE I WASTEWATER TREATMENT PLANT OPERATOR**

An applicant for a grade I certificate (lowest) shall be expected to have a general knowledge of the operation of small treatment plants. The applicant shall have knowledge of the laws and regulations related to wastewater treatment plant operation and knowledge of equipment usually employed in such plants, and be able to describe the general maintenance requirements for such plant units. The applicant must submit an application showing that one of the following prerequisite combinations of training and experience has been met in order to take the grade I examination:

- (1) three years of acceptable experience in wastewater treatment plant operation;
- (2) completion of eighth grade of school and two years of acceptable experience in wastewater treatment plant operation;
- (3) satisfactory completion of a Grade I approved training school for wastewater treatment plant operators and one year of acceptable experience in wastewater treatment plant operation;
- (4) graduate of a high school, or equivalent GED, and three months of acceptable experience in wastewater treatment plant operation;
- (5) graduate of a high school or equivalent GED or a two or four year college and completion of approved training school. Provided, however, that if an applicant fails the Grade I examination after three attempts, the applicant must then satisfactorily complete a Grade I approved training school before taking the Grade I examination again.

Statutory Authority G.S. 90A-39; 143B-300.

**.0202 GRADE II WASTEWATER TREATMENT PLANT OPERATOR**

(a) An applicant for a grade II certificate shall be expected to have a general knowledge of the various types of wastewater treatment plants and the processes involved; a general knowledge of the composition of wastewater and the proper sam-

pling thereof; a general knowledge of the procedure involved in making basic physical and chemical tests and their application to treatment plant control and knowledge of the laws and regulations related to wastewater treatment plant operation; the ability to make simple calculations; general knowledge of the proper maintenance of the various treatment plant units and the mechanical equipment involved; the ability to keep and interpret records; the ability to practice safety and maintain good public relations; and such other information as may be deemed pertinent by the ~~Wastewater Treatment Plant Water Pollution Control System~~ Operators Certification Commission.

(b) The applicant must submit an application showing that one of the following prerequisite combinations of training and experience has been met in order to take the grade II examination:

- (1) satisfactory completion of a Grade II approved training school for wastewater treatment plant operators and two years of acceptable experience in a North Carolina class I, or equivalent, wastewater treatment plant or higher;
- (2) a an active North Carolina grade I certificate, or equivalent, and one year of acceptable operator experience in a North Carolina class I, or equivalent, wastewater treatment plant or higher;
- (3) graduate of high school, or equivalent GED, and six months of acceptable experience in a North Carolina class I, or equivalent, wastewater treatment plant or higher;
- (4) graduate of a recognized two-year college or technical school or college or university and six months of acceptable experience in wastewater treatment operation. Provided, however, that if an applicant fails the Grade II examination after three attempts, the applicant must then satisfactorily complete a Grade II approved training school before taking the Grade II examination again.

Statutory Authority G.S. 90A-39; 143B-300.

**.0205 GRADE I COLLECTION SYSTEM OPERATOR**

(a) An applicant for a grade I collection system certificate (lowest) shall have a basic knowledge of the purpose and operation of a collection system and shall be able to perform basic tasks in a manner that does not endanger himself/herself or

others.

(b) The applicant must submit an application showing that one of the following prerequisite combinations of training and experience has been met in order to take the Grade I Collection Systems examination:

- (1) two years of acceptable experience and completion of an approved training school for Grade I Collection Systems;
- (2) completion of the eighth grade and one year of acceptable experience and completion of an approved training school for Grade I Collection Systems;
- (3) graduate of high school or equivalent GED and completion of an approved training school for Grade I Collection Systems.

Provided, however that if an applicant fails the Grade I Collection Systems examination after three attempts, the applicant must then satisfactorily complete a Grade I Collection Systems approved training school before taking the Grade I Collection Systems examination again.

*Statutory Authority G.S. 90A-39; 143B-300.*

#### **.0206 WAIVER OF EXAMINATION ELIGIBILITY REQUIREMENTS**

~~(a) The educational and/or experience requirements for eligibility for examinations for permanent certification may be waived by the commission, in its discretion, on a case by case basis provided it finds:~~

- ~~(1) The applicant is uniquely qualified through education and/or experience for the grade certification sought although the education or experience requirements in 8B .0201 to .0204 of this Chapter may not be strictly met; or~~
- ~~(2) That the plant at which the applicant is currently the operator in responsible has been reclassified a minimum of two grade levels higher, such that the applicant cannot meet all the education and/or experience requirements for certification at the grade to which the plant has been classified.~~

The declaration of eligibility for examination for certification to a grade by waiver of requirements is an extraordinary action in the sole discretion of the commission, and is not the right of any applicant.

~~(b) The procedure to be followed in requesting of the commission a waiver of the education and/or experience requirements for eligibility for~~

~~examination for permanent certification shall be as follows:~~

- ~~(1) Applicant must petition the commission for a waiver of education or experience requirements;~~
- ~~(2) Petition must document the circumstances which qualify the applicant under (a)(1) or (2) of this Rule;~~
- ~~(3) Staff will review the petition and submit it to the commission at its next regularly scheduled meeting with the recommendations;~~
- ~~(4) The applicant may appear at the meeting at which the commission considers the petition;~~
- ~~(5) The commission will consider the petition, and decide whether or not to make a waiver in the applicant's case and the chairman shall inform the applicant in writing of the commission's decision.~~

*Statutory Authority G.S. 90A-39; 143B-300.*

#### **.0207 GRADE II COLLECTION SYSTEM OPERATOR**

(a) An applicant for a grade II collection systems certificate shall be expected to install, maintain and repair various components of a collection system in a safe manner.

(b) Applicant must hold a current Grade I Collection System certificate for six months and must submit an application showing that the following prerequisite combinations of training and experience have been met in order to take the Grade II collection Systems examination:

- (1) Provide documentation from the applicants supervisor that the following tasks have been completed prior to the training school:
  - (A) make a sewer tap with a machine
  - (B) install a sewer cleanout
  - (C) demonstrate ability to properly operate some sewer maintenance equipment
- (2) Have two years of acceptable experience and completion of an approved training school for Grade II Collection Systems.

Provided, however, that if an applicant fails the Grade II Collection Systems examination after three attempts, the applicant must then satisfactorily complete a Grade II Collection Systems approved training school before taking the Grade II Collection Systems examination again.

Statutory Authority G.S. 90A-39; 143B-300.

## **.0208 GRADE III COLLECTION SYSTEM OPERATOR**

(a) An applicant for a grade III collection systems certificate shall be expected to ensure safety, and perform and supervise installation and maintenance of a collection system while maintaining records and public relations.

(b) Applicant must hold a current Grade II collection System certificate for six months and must submit an application showing that the following prerequisite combinations of training and experience have been met:

- (1) Hold a current CPR certification
- (2) Have three years of acceptable experience and completion of an approved training school for Grade III Collection Systems.

Provided, however, that if an applicant fails the Grade III Collection Systems examination after three attempts, the applicant must then satisfactorily complete a Grade III Collection Systems approved training school before taking the Grade III Collection Systems examination again.

Statutory Authority G.S. 90A-39; 143B-300.

## **.0209 GRADE IV COLLECTION SYSTEM OPERATOR**

(a) An applicant for grade IV collection systems certificate shall be expected to supervise employees and manage the overall installation, operation and maintenance of collection systems in a safe manner.

(b) Applicant must hold a current Grade III Collection System certificate for six months and must submit an application showing that the following prerequisite combinations of training and experience have been met:

- (1) Hold a current CPR certification
- (2) Completion of two hours of approved confined spaces training
- (3) Have four years of acceptable experience and completion of an approved training school for Grade IV Collection Systems.

Provided, however that if an applicant fails the Grade IV Collection Systems examination after three attempts, the applicant must then satisfactorily complete a Grade IV Collection Systems approved training school before taking the Grade IV Collection Systems examination again.

Statutory Authority G.S. 90A-39; 143 B-300.

## **.0210 SUBSURFACE SYSTEM OPERATOR**

(a) An applicant for a Subsurface System Operator certificate shall be expected to have specific knowledge regarding the subsurface treatment and disposal of wastewater. The applicant shall have knowledge of the principals of the soil as a treatment system and the design and construction of subsurface treatment and disposal systems. The applicant shall be familiar with wastewater characteristics and the proper operation and maintenance of a septic tank, pump tank, sand filter, grease trap/grease interceptor, oil/water separator, conventional subsurface system, low pressure pipe system, and other alternative subsurface systems, including those consisting of multiple drain fields. The applicant shall also be familiar with various pumps, distribution mechanisms and electronic controls commonly used in these systems; and shall have the ability to make calculations and measure wastewater flow rates in these systems by various means. The applicant shall also have the ability to keep and interpret records and to complete reports as required by the permit.

(b) The applicant shall submit an application showing that one of the following prerequisite combinations of training and experience is met in order to take the Subsurface System examination.

- (1) three years of acceptable experience in subsurface system operation, installation, inspection or design and the successful completion of an approved subsurface training school; or
- (2) completion of the eighth grade and have two years of experience in subsurface system operation, installation, inspection or design and the successful completion of an approved subsurface training school; or
- (3) be a graduate of high school or have earned an equivalent GED and have one year of experience in subsurface system operation, insolation, inspection or design and successful completion of an approved subsurface training school; or
- (4) be a graduate of two or four year college (with a minimum of 900 contact hours) with academic preparation in chemistry, biology, public health, geology, environmental science, agronomy, soils engineering, or a related field and successful completion of an approved subsurface training school; or
- (5) be a registered sanitarian, professional engineer, or actively certified wastewater operator and successful

completion of an approved subsurface training school.

- (6) be a private homeowner who intends to operate only their own domestic, on-site system who has successfully completed an approved subsurface training school.

Provided, however that if an applicant fails the Subsurface Systems examination after three attempts, the applicant must then satisfactorily complete a Subsurface Systems approved training school before taking the Subsurface Systems examination again.

*Statutory Authority G.S. 90A-39; 143B-300.*

## **.0211 LAND APPLICATION/RESIDUALS OPERATOR**

(a) An applicant for a Land Application/Residuals Operator certificate shall be expected to have specific knowledge regarding treatment and utilization of residuals and biosolids. The applicant should have knowledge of the principals of the soil as a treatment system and the proper operation of land application systems. The applicant shall be familiar with the characteristics of residuals and biosolids and the proper operation and maintenance of the equipment used in the land application process. The applicant shall also be familiar with the laws and regulations governing these systems and shall have the ability to make appropriate calculations. The applicant shall also have the ability to keep and interpret records and to complete reports as required by the permit.

(b) The applicant shall submit an application showing that one of the following prerequisite combinations of training and experience is met in order to take the Land Application examination.

- (1) three years of acceptable experience in a land application operation, and the successful completion of an approved land application training school; or
- (2) completion of the eighth grade and have two years of experience in a land application operation and the successful completion of an approved land application training school; or
- (3) be a graduate of high school or have earned an equivalent GED and have one year of experience in a land application operation, and successful completion of an approved land application training school; or
- (4) be a graduate of a two or four year college (with a minimum of 900 contact

hours) with academic preparation in chemistry, biology, public health, geology, environmental science, agronomy, soils, engineering, or a related field, or be an actively certified wastewater treatment plant operator and successful completion of an approved land application training school.

Provided, however that if an applicant fails the Land Application Systems examination after three attempts, the applicant must then satisfactorily complete a Land Application Systems approved training school before taking the Land Application Systems examination again.

*Statutory Authority G.S. 90A-39; 143B-300.*

## **.0212 SPRAY IRRIGATION OPERATOR**

(a) An applicant for a Spray Irrigation Operator certificate shall be expected to have specific knowledge regarding the treatment and spray irrigation of wastewater. The applicant should have knowledge of the principals of the soil as a treatment system and the proper operation of spray irrigation systems. The applicant shall be familiar with the characteristics of wastewater and the proper operation and maintenance of the equipment used in the spray irrigation process. The applicant must also be familiar with the laws and regulations governing these systems and shall have the ability to make appropriate calculations. The applicant shall also have the ability to keep and interpret records and to complete reports as required by the permit.

(b) The applicant shall submit an application showing that one of the following prerequisite combinations of training and experience has been met in order to take the Spray Irrigation examination.

- (1) three years of acceptable experience in spray irrigation operation; or
- (2) completion of the eighth grade and have two years of experience in spray irrigation; or
- (3) be a graduate of high school or have earned an equivalent GED and have one year of acceptable experience in spray irrigation; or
- (4) be a graduate of a two or four year college (with a minimum of 900 contact hours) with academic preparation in chemistry, biology, public health, geology, environmental science, agronomy, soils, engineering or a related field, or be an actively certified wastewater

treatment plant operator and successful completion of an approved spray irrigation training school; or

- (5) be a private homeowner who intends to operate only their own domestic, spray irrigation system who has successfully completed an approved spray irrigation training school.

Provided, however, that if an applicant fails the Spray Irrigation examination after three attempts, the applicant must then satisfactorily complete a Spray Irrigation approved training school before taking the Spray Irrigation examination again.

*Statutory Authority G.S. 90A-39; 143B-300.*

### **.0213 OPERATOR-IN-TRAINING**

(a) The Commission may allow an applicant for the Grade III or IV wastewater treatment plant operator certificate or the Grade III or IV collection system operator certificate to take the examination at that level, if the individual has met all of the prerequisite education and certification requirements but is unable to meet the experience requirement, for the purpose of becoming an operator-in-training (OIT). In order to qualify for the OIT certificate the applicant may lack a maximum of two years of experience that would be required to gain full certification at that level.

(b) Upon successfully passing the examination at that level, the applicant will be issued an "operator-in-training" certificate for the grade applied for.

(c) The operator-in-training certificate does not qualify the individual to be the ORC of a facility of the same classification as the OIT certificate. The OIT certificate does qualify the individual to be the ORC of a facility that is one or more classifications below the grade of the OIT certificate.

(d) Operator in Training certificates must be renewed annually but shall only be valid for a period of two years. When the holder of an OIT certificate completes the prerequisite experience for the standard certificate at that level, the holder must submit an application documenting the experience, with the appropriate fee for a replacement certificate in order to receive the standard certificate at that level.

*Statutory Authority G.S. 90A-39; 143B-300.*

### **.0214 DEFINITIONS**

(a) Acceptable experience shall mean the total time spent in a wastewater treatment plant opera-

tion water pollution control system operation and related fields of which at least 50 percent must be actual operating experience in a wastewater treatment plant water pollution control system of the same type as the certificate being applied for (ie. actual experience in a wastewater treatment system is required for applicants for wastewater operators certificates, collection systems experience is required for applicants for collections certificates, etc.)

(b) Recognized college or university shall mean an accredited four-year institution awarding degrees on the bachelor's level.

(c) Recognized two year college or technical school shall mean an accredited two-year institution awarding degrees on the associate level.

(d) Related experience shall mean experience in fields related to the wastewater field such as: water treatment operation and maintenance; wastewater maintenance or installation; water or wastewater laboratory experience; project engineering involving designing, constructing or start-up of treatment facilities; collection system operation and maintenance (for wastewater certification or subsurface certification) and inspection of wastewater treatment facilities.

(e) Satisfactory or successful completion of an approved training school shall mean attendance of at least 80 percent of the total hours of instruction of a non-degree technical course approved by the Wastewater Treatment Plant Water Pollution Control System Operators Certification Commission.

(f) Two years of college shall mean a minimum of 900 contact hours.

*Statutory Authority G.S. 90A-39; 143B-300.*

## **SECTION .0300 - CERTIFICATION BY EXAMINATION**

### **.0301 TIME AND PLACE OF EXAMINATION**

The certification commission Certification Commission or its representatives shall conduct examinations for certification at the time and place hereinafter designated:

- (1) An examination will be given following the annual wastewater treatment plant operators' school as sponsored by the North Carolina Water Control Association and the Wastewater Treatment Plant Water Pollution Control System Operators Certification Commission. The date, time, and place of examination will be



determined by the ~~certification~~ commission Certification Commission. Announcements of the school and examination will be mailed to the owners of all wastewater treatment plants and to others as deemed appropriate by the ~~certification~~ commission Certification Commission. Each applicant filing for examination will be notified in writing of the date, time, and place of the examination and the required grade for passing the examination.

- (2) Examinations may be administered following regional wastewater treatment plant operator's schools. The examination will be scheduled at the same location at which the school is held or at another convenient location. Announcements of the school will be mailed to all wastewater treatment plants in the region in which the school will be held. In addition, the date and time of the examination will be announced at the school and each applicant will be notified in writing of the date, time, and place of the examination and the required grade for passing the examination.
- (3) Special examinations may be given by the ~~commission~~ Commission at any time or place when a sufficient number of applications have been filed to justify an examination, as determined by the ~~commission~~ Commission. Each applicant filing for examination will be notified in writing of the date, time, and place of the examination and the required grade for passing the examination.

*Statutory Authority G.S. 90A-39; 93B-8; 143B-300.*

#### **.0302 CONDUCTING AND GRADING EXAMINATIONS**

(a) Examinations, prepared by members of the ~~commission~~ Commission or its authorized representatives and approved by the ~~commission~~ Commission, will be given only to those who, after filing proper application, have been determined to be eligible. Examinations will be conducted and graded under the supervision of a representative of the ~~commission~~ Commission, or its authorized representatives. Assistance in conducting and grading the examinations may be sought from members of the Division of Environmental Management, and other appropriate persons with the

approval of the ~~commission~~ Commission. ~~Examinations will be renumbered; therefore, examinee's paper will be identified by number rather than by name.~~ When each examinee receives his examination paper, he will identify himself by way of his driver's license or other form of identification satisfactory to the proctor and the identification number will be recorded on the face of the examination paper.

(b) Representatives of the Commission, or other authorized representatives, who are supervising the examinations may take appropriate action against applicants, including dismissal from the examination, if cheating does occur. If the applicant holds a certificate already, the Commission may revoke the certification in accordance with G.S. 90A-41 and 15A NCAC 8D .0004, for cheating on an examination.

*Statutory Authority G.S. 90A-39; 93B-8; 143B-300.*

#### **.0303 EXAMINATION RESULTS AND ISSUANCE OF CERTIFICATES**

(a) Within as short a period as feasible, after an examination, the examinee will be informed, in writing only, by the ~~commission~~ Commission or its authorized representatives as to the results of his examination. If a passing score is made, such notification constitutes certification by the ~~commission~~ Commission that the applicant is a qualified operator in the appropriate grade. After each examination, a list of those certified shall be drawn up and made a part of the permanent records of the ~~commission~~ Commission. Copies of these lists will be provided to each ~~commission~~ Commission member. Upon completion of the lettering, the qualifying applicant will be issued a certificate designating his level of competency.

(b) Under normal circumstances, neither the examination grade nor the examination paper of any applicant will be made available to anyone other than the members of the ~~commission~~ Commission and those approved persons who assist in conducting and grading the examinations. The examination papers will be held for a period of six months following notification to the examinee. Questions by the applicant concerning the examination must be made in writing to the ~~commission~~ Commission within that period. An applicant who fails to pass an examination shall be entitled to and notified of the privilege to review his examination in the presence of one or more ~~commission~~ Commission members or its authorized representative



in the Raleigh office, or upon request, at a regional office of the Department of Environment, Health and Natural Resources or other appropriate place.

(c) In order to assure active certification, an annual renewal fee will be required as specified in G.S. 90A-42. If the renewal fee is not paid for three consecutive years, the Commission may invalidate the certificate in accordance with 15 A NCAC 8D .0004(d).

*Statutory Authority G.S. 90A-39; 90A-40; 90A-42; 93B-3; 93B-8; 143B-300.*

## SECTION .0400 - CERTIFICATION WITHOUT EXAMINATION

### .0402 RECIPROCITY CERTIFICATION

(a) Permanent certificates in the appropriate type and grade may be issued without examination to individuals listed on the Reciprocity Registry of the National Association of Boards of Certification.

(b) After receipt of application, fee, and proof of listing on the Reciprocity Registry of the National Association of Boards of Certification, the Certification Commission or its designee may issue a permanent certificate in the appropriate type and grade if ~~it is~~ satisfied that all other conditions for certification are met.

(c) In order to assure active certification, an annual renewal fee in the amount specified in G.S. 90A-42 will be required.

*Statutory Authority G.S. 90A-37; 90A-40~~(d)~~; 90A-42; 143B-300.*

### .0404 TEMPORARY CERTIFICATION

(a) Temporary certification, without examination, may be issued by the ~~certification commission~~ Certification Commission at its discretion. Temporary certificates may be issued with such special conditions or requirements relating to the place of employment of the person holding the certificate or other matters as the ~~commission~~ Commission may deem necessary to protect the public health and maintain the water quality standards in the receiving waters as assigned by the Environmental Management Commission.

(b) Issuance of such temporary certificates shall be limited to situations where the supply or availability of certified operators is found to be inadequate. Circumstances that will be considered by the ~~commission~~ Commission include:

(1) A certified operator in a lower grade

level is accumulating experience in order to qualify to take examination in a higher grade level equal to the classification of the facility for which he is responsible;

(2) When an operator has attempted to secure permanent certification by taking examination and fails;

(3) An employer had unexpectedly lost a certified operator and must secure a certified operator in order to comply with the General Statutes.

(c) Application for a temporary certificate must be made on an official application blank, obtainable from the ~~commission~~ Commission, and must be accompanied by the appropriate certification fee. It must also be accompanied by a statement signed by the mayor, the city manager, the chairman of the governing board or chief administrative officer of the political subdivision or from the owner or officer in responsible charge in the case of a private utility or industry. Such statement shall delineate the reasons why a temporary certificate is being requested, shall designate the applicant as the operator in responsible charge, and shall specify plans to acquire permanent certification by examination. The conditions surrounding this request will be reviewed by the staff and if all conditions are met the Commission or its designee may approve the issuance of the temporary certificate. If the staff determines that all conditions have not been met, the Commission will consider the request and will determine if the temporary certificate is to be issued.

(d) Temporary certificates are valid for one year from the date of issuance at the place of employment for which they are issued.

(e) A temporary certificate may only be requested for "temporary" situations and will be limited to the original one year of issuance plus one year additional renewal period for one individual. A temporary certificate or certificates will be valid at any individual ~~wastewater treatment plant~~ water pollution control system for no more than three continuous years from the original date of issuance.

(f) If for any reason it becomes necessary for the employer to file an application requesting the issuance of a second temporary certificate, such application must be accompanied by documentation of the employer's efforts to employ a properly certified operator in addition to all applicable requirements for temporary certificate issuance.

(g) The applicant for a temporary certificate must possess the capability to become eligible for

examination for permanent certification within the period of the requested temporary certificate. Upon becoming qualified by reason of experience, education and training, he is expected to apply for examination and obtain a permanent certificate. Failure to attempt permanent certification will be reason for not granting renewal.

(h) If eligible for temporary certification, the applicant will be issued a temporary certificate of a grade equivalent to the classification of the wastewater treatment facility in which the applicant is employed.

*Statutory Authority G.S. 90A-40(e); 143B-300.*

#### **.0406 VOLUNTARY CONVERSION TO MANDATORY CERTIFICATION**

(a) Individuals who hold certificates of competency issued under the voluntary certification program for collection system operators administered by the North Carolina Water Pollution Control Association may apply for conversion of the voluntary certificate to a certificate issued by the Certification Commission of the same type and grade in accordance with G.S. 90A-40(f).

(b) Applications for conversion will be made available to those individuals certified under the voluntary certification program. These applications must be submitted with the appropriate fee for a conversion certificate in accordance with G.S. 90A-42 (8).

*Statutory Authority G.S. 90A-40(f).*

#### **SECTION .0500 - FEES: REINSTATEMENT: AND ANNUAL REPORT**

##### **.0502 REFUNDING OF FEES**

Fees or portions thereof as the ~~certification~~ Certification Commission deems appropriate will be refunded in accordance with 15A NCAC 8A .0202 when an applicant is ineligible for certification, ~~unable to attend examination,~~ or has overpaid.

*Statutory Authority G.S. 90A-42; 143B-300.*

##### **.0506 CONTRACT OPERATORS ANNUAL REPORT**

All Contract Operations Firms must file an annual report with the Certification Commission in accordance with G.S. 90A-45(c). This report shall be on file in the office of the Chairman on or before January 15 of each year. This report shall include:

- (1) The name of the company; mailing address; phone number; name of the owner; and name of the principal contact for certification activities; the names and permit numbers of the facilities for which the company is responsible; the counties in which the company operates; the certified laboratory used by the company; the names of the certified personnel employed by the company and their certifications; other related services that the company wishes to report, and;
- (2) the company's willingness to appear on a list of contract operations firms and to have this file information available to the public.

*Statutory Authority G.S. 90A-45(c).*

**SUBCHAPTER 8C - CLASSIFICATION OF WATER POLLUTION CONTROL SYSTEMS**

**.0002 RATING SCALE FOR CLASSIFICATION OF WASTEWATER TREATMENT FACILITIES**

(a) In-plant processes and related control equipment which are an integral part of industrial production shall not be considered waste treatment for the purpose of this Section. ~~Likewise, discharges of wastewater from residences having a design flow of 1,000 gpd or less, shall not be subject to the provisions of this Section.~~ Facilities consisting of a septic tank and subsurface disposal field without a pump or other appurtenances will not be subject to the provisions of this Section. Pretreatment systems prior to subsurface treatment and disposal systems in excess of septic tanks, pump tanks, siphon or pump-dosing systems, sand filters, grease traps and grease interceptors, and oil/water separators shall be rated according to this Section. Pretreatment systems prior to spray irrigation of wastewater in excess of preliminary treatment, lagoons, septic tanks, pump tanks, pumps, sand filters, grease trap or grease interceptors, oil/water separators, disinfection and chemical addition for nutrient or algae control, shall be rated according to this Section.

(b) The following scale is used for rating wastewater treatment facilities:

ITEM	POINTS
(1) Industrial Pretreatment Units <del>and/or or</del> Industrial Pretreatment Program (see definition No. 33) . . . . .	4
(2) DESIGN FLOW OF PLANT IN gpd [not applicable to non-contaminated cooling waters, sludge handling facilities for water purification plants, totally closed cycle systems( <del>def. see definition</del> No. 11), and facilities consisting only of Item (4)(d) or Items (4)(d) and (11)(d)]	
0 - 20,000 . . . . .	1
20,001 - 50,000 . . . . .	2
50,001 - 100,000 . . . . .	3
100,001 - 250,000 . . . . .	4
250,001 - 500,000 . . . . .	5
500,001 - 1,000,000 . . . . .	8
1,000,001 - 2,000,00010	
2,000,001 (and up) rate 1 point additional for each 200,000 gpd capacity up to a maximum of . . . . .	30
Design Flow (gpd) _____	
(3) PRELIMINARY UNITS/ <u>PROCESSES</u> (see definition No. 32)	
(A) Bar screens . . . . .	1
or	
(B) Mechanical Screens, Static Screens or Comminuting Devices . . . . .	2
(C) Grit Removal . . . . .	1
or	
(D) Mechanical or Aerated Grit Removal . . . . .	2
(E) Flow Measuring Device . . . . .	1
or	
(F) Instrumented Flow Measurement . . . . .	2
(G) Preaeration . . . . .	2
(H) Influent Flow Equalization . . . . .	2
(I) Grease or Oil Separators - Gravity . . . . .	2
Mechanical . . . . .	3
Dissolved Air Flotation . . . . .	8
(J) Prechlorination . . . . .	5
(4) PRIMARY TREATMENT UNITS/ <u>PROCESSES</u>	
(A) Septic Tank (see definition <del>no</del> No. 43) . . . . .	2
(B) Imhoff Tank . . . . .	5
(C) Primary Clarifiers . . . . .	5
(D) Settling Ponds or Settling Tanks for Inorganic Non-toxic Materials	

(sludge handling facilities for water purification plants, sand, gravel, stone, and other mining operations except recreational activities such as gem or gold mining) . . . . .	2
(5) SECONDARY TREATMENT UNITS/ <u>PROCESSES</u>	
(A) Carbonaceous Stage	
(i) Aeration-High Purity Oxygen System . . . . .	20
Diffused Air System . . . . .	10
Mechanical Air System (fixed, floating or rotor) . . . . .	8
Separate Sludge Reaeration . . . . .	3
(ii) Trickling <del>filter</del> <u>Filter</u> -High Rate . . . . .	7
Standard Rate . . . . .	5
Packed Tower . . . . .	5
(iii) Biological Aerated Filter or Aerated Biological Filter . . . . .	10
(iv) Aerated Lagoons . . . . .	10
(v) Rotating Biological Contactors . . . . .	10
(vi) Sand Filters - intermittent biological . . . . .	2
Recirculating biological . . . . .	3
(vii) Stabilization Lagoons . . . . .	5
(viii) Clarifier . . . . .	5
(ix) Single stage system for combined carbonaceous removal of BOD and nitrogenous removal by nitrification (see <del>def.</del> definition No. 12) (Points for this item have to be in addition to items (5)(a)(i) through (5)(a)(viii) . . . . .	87
(x) Nutrient additions to enhance BOD removal . . . . .	5
(xi) Biological Culture ("Super Bugs") addition . . . . .	5
(B) Nitrogenous Stage	
(i) Aeration - High Purity Oxygen System . . . . .	20
Diffused Air System . . . . .	10
Mechanical Air System (fixed, floating or rotor) . . . . .	8
Separate Sludge Reaeration . . . . .	3
(ii) Trickling Filter-High Rate . . . . .	7
Standard Rate . . . . .	5
Packed Tower . . . . .	5
(iii) Biological Aerated Filter or Aerated Biological Filter . . . . .	10
(iv) Rotating Biological Contactors . . . . .	10
(v) Sand Filter - intermittent biological . . . . .	2
Recirculating biological . . . . .	3
(vi) Clarifier . . . . .	5
(6) TERTIARY OR ADVANCED TREATMENT UNITS/ <u>PROCESSES</u>	
(A) Activated Carbon Beds -	
without carbon regeneration . . . . .	5
with carbon regeneration . . . . .	15
(B) Powdered or Granular Activated Carbon Feed-	
without carbon regeneration . . . . .	5
with carbon regeneration . . . . .	15
(C) Air stripping . . . . .	5
(D) Denitrification Process . . . . .	10
(E) Electrodialysis . . . . .	5
(F) Foam Separation . . . . .	5
(G) Ion Exchange . . . . .	5
(H) Land Application of Treated Effluent (see definition <del>no.</del> <u>No.</u> 22b) (not applicable for sand, gravel, stone and other similar mining operations) <u>by high rate infiltration</u> . . . . .	4
(i) <del>on agriculturally managed sites (See Def. No. 4)</del> . . . . .	10
(ii) <del>by high rate infiltration on non-agriculturally managed sites</del>	

<del>(includes rotary distributors and similar fixed nozzle systems)</del> . . . . .	4
(iii) <del>by subsurface disposal (includes low pressure pipe systems</del> <del>and gravity systems except at plants consisting of septic tank</del> <del>and nitrification lines only)</del> . . . . .	4
(I) Microscreens . . . . .	5
(J) Phosphorous Removal by Biological Processes ( <del>See def.</del> <u>See definition</u> No. 26) . .	20
(K) Polishing Ponds - without aeration . . . . .	2
with aeration . . . . .	5
(L) Post Aeration - cascade . . . . .	0
diffused or mechanical . . . . .	52
(M) Reverse Osmosis . . . . .	5
(N) Sand or Mixed-Media Filters - low rate . . . . .	2
high rate . . . . .	5
(O) Treatment processes for removal of metal or cyanide . . . . .	15
(P) treatment processes for removal of toxic materials other than metal or cyanide . .	15
(7) <b>SLUDGE TREATMENT</b>	
(A) Sludge Digestion Tank - Heated . . . . .	10
Aerobic . . . . .	5
Unheated . . . . .	3
(B) Sludge Stabilization (chemical or thermal) . . . . .	5
(C) Sludge Drying Beds - Gravity . . . . .	2
Vacuum Assisted . . . . .	5
(D) Sludge Elutriation . . . . .	5
(E) Sludge Conditioner (chemical or thermal) . . . . .	5
(F) Sludge Thickener (gravity) . . . . .	5
(G) Dissolved Air Flotation Unit [not applicable to a unit rated as (3)(i)] . . . . .	8
(H) Sludge Gas Utilization (including gas storage) . . . . .	2
(I) Sludge Holding Tank - Aerated . . . . .	5
Non-aerated . . . . .	2
(J) Sludge Incinerator (not including activated carbon regeneration) . . . . .	10
(K) Vacuum Filter, Centrifuge, or Filter Press or other similar dewatering devices . .	10
(8) <b><u>SLUDGE RESIDUALS UTILIZATION/DISPOSAL</u></b> (including incinerated ash)	
(A) Lagoons . . . . .	2
(B) Land Application (surface and subsurface) (see definition 22a) <del>where the facility hold the land application permit</del> . . . . .	10
by contracting to a land application operator or <u>landfill operator</u> who holds the land application permit or <u>landfill permit</u> . . . . .	2
<del>land application of sludge by a contractor who does not hold</del> <del>the permit for the wastewater treatment facility where the sludge is generated</del> . . .	10
(C) <u>Dedicated Landfilled (burial) by the permittee of the wastewater treatment facility</u> .	5
(9) <b>DISINFECTION</b>	
(A) Chlorination . . . . .	5
(B) Dechlorination . . . . .	5
(C) Ozone . . . . .	5
(D) Radiation . . . . .	5
(10) <b>CHEMICAL ADDITION SYSTEM(S)</b> ( <u>See see definition</u> No. 9) [not applicable to chemical additions rated as Item (3)(j), (5)(a)(xi), (6)(a), (6)(b), (7)(b), (7)(e), (9a), (9)(b) or (9)(c) 5 points each: List _____ . . . . .	5
_____ . . . . .	5
_____ . . . . .	5
_____ . . . . .	5
(11) <b>MISCELLANEOUS UNITS/<u>PROCESSES</u></b>	
(A) Holding Ponds, Holding Tanks or Settling Ponds for Organic or Toxic Materials including wastes from mining operations	

	containing nitrogen <del>and/or</del> or phosphorus compounds in amounts significantly greater than is common for domestic wastewater . . . . .	4
(B)	Effluent Flow Equalization (not applicable to storage basins which are inherent in land application systems) . . . . .	2
(C)	Stage Discharge (not applicable to storage basins inherent in land application systems) . . . . .	5
(D)	Pumps . . . . .	3
(E)	Stand-By Power Supply . . . . .	3
(F)	Thermal Pollution Control Device . . . . .	3
	TOTAL POINTS . . . . .	

CLASSIFICATION

Class I . . . . .	5-25 Points
Class II . . . . .	26-50 Points
Class III . . . . .	51-65 Points
Class IV . . . . .	66-Up Points

Facilities having a rating of one through four points, inclusive, do not require a certified operator. Classification of all other facilities requires a comparable grade operator in responsible charge.

The following systems shall be assigned a Class I classification, unless the flow is of a significant quantity or the technology is unusually complex, to require consideration by the Commission on a case-by-case basis:

Oil/water Separator Systems consisting only of physical separation, pumps and disposal;

Septic Tank/Sand Filter Systems consisting only of septic tanks, dosing apparatus, pumps, sand filters, disinfection and disposal;

Lagoon Systems consisting only of preliminary treatment, lagoons, pumps, disinfection, necessary chemical treatment for algae or nutrient control, and discharge;

Closed-loop Recycle Systems;

Groundwater Remediation Systems consisting only of pumps, air-stripping, carbon adsorption, disinfection and disposal;

Fish farms with discharge to surface waters;

Water Plant sludge handling and back-wash water treatment;

Seafood processing consisting of screening and disposal.

Single-family discharging systems with the exception of Aerobic Treatment Units

Facilities having an activated sludge process will be assigned a minimum classification of Class II.

Facilities having treatment processes for the removal of metal or cyanide will be assigned a minimum classification of Class II.

Facilities having treatment processes for the biological removal of phosphorus will be assigned a minimum classification of Class III.

Any units or processed not included in the rating system will be assigned a point value by the Commission on a case-by-case basis.

Statutory Authority: G.S. 90A-37.

**.0004 DEFINITIONS**

The following definitions shall apply throughout this Subchapter.

- (1) Activated Carbon Beds. A physical/chemical method for reducing soluble organic material from wastewater effluent: The column-type beds used in this

method will have a flow rate varying from two to eight gallons per minute per square foot and may be either upflow or downflow carbon beds. Carbon may or may not be regenerated on the wastewater treatment plant site;

- (2) Aerated Lagoons. A basin in which all solids are maintained in suspension and

by which biological oxidation or organic matter is reduced through artificially accelerated transfer of oxygen on a flow-through basis;

- (3) Aeration. A process of bringing about intimate contact between air or high purity oxygen in a liquid by spraying, agitation or diffusion;
- (4) Agriculturally managed site. Any site on which a crop is produced, managed, and harvested (Crop includes grasses, grains, trees, etc.);
- (5) Air Stripping. A process by which the ammonium ion is first converted to dissolved ammonia (pH adjustment) with the ammonia then released to the atmosphere by physical means; or other similar processes which remove petroleum products such as benzene, toluene, and xylene;
- (6) Carbon Regeneration. The regeneration of exhausted carbon by the use of a furnace to provide extremely high temperatures which volatilize and oxidize the absorbed impurities;
- (7) Carbonaceous Stage. A stage of wastewater treatment designed to achieve "secondary" effluent limits;
- (8) Centrifuge. A mechanical device in which centrifugal force is used to separate solids from liquids ~~and/or~~ or to separate liquids of different densities;
- (9) Chemical Addition Systems- The addition of chemical(s) to wastewater at an application point for purposes of improving solids removal, pH adjustment, alkalinity control, etc.; the capability to experiment with different chemicals and different application points to achieve a specific result will be considered one system; the capability to add chemical(s) to dual units will be rated as one system; capability to add a chemical at a different application points for different purposes will result in the systems being rated as separate systems;
- (10) Chemical Sludge Conditioning. The addition of a chemical compound such as lime, ferric chloride, or a polymer to wet sludge to coalesce the mass prior to its application to a dewatering device;
- (11) Closed Cycle Systems. Use of holding ponds or holding tanks for containment of wastewater containing inorganic, non-toxic materials from sand, gravel, crushed stone or other similar operations.

~~from which there is no discharge to the surface waters;~~ Such systems shall carry a maximum of two points regardless of pumping facilities or any other appurtenances;

- (12) Combined Removal of Carbonaceous BOD and Nitrogenous Removal by Nitrification- A single stage system ~~"designed"~~ required to achieve ~~"advanced"~~ permit effluent limits on BOD and ammonia nitrogen within the same biological reactor;
- (13) ~~De-chlorination~~ Dechlorination. The partial or complete reduction of residual chlorine in a liquid by any chemical or physical process;
- (14) Denitrification Process. The conversion of nitrate-nitrogen to nitrogen gas;
- (15) Electrodialysis. Process for removing ionized salts from water through the use of ion-selective ion-exchange membranes;
- (16) Filter Press. A process operated mechanically for partially dewatering sludge;
- (17) Foam Separation. The planned frothing of wastewater or wastewater effluent as a means of removing excessive amounts of detergent materials through the introduction of air in the form of fine bubbles; also called foam fractionation;
- (18) Grit Removal. The process of removing grit and other heavy mineral matter from wastewater;
- (19) Imhoff Tank. A deep two story wastewater tank consisting of an upper sedimentation chamber and a lower sludge digestion chamber.
- (20) Instrumented Flow Measurement. A device which indicates ~~and/or~~ and records rate of flow;
- (21) Ion Exchange. A chemical process in which ions from two different molecules are exchanged;
- (22) Land application:
  - (a) Sludge Disposal. A final sludge disposal method by which wet sludge may be applied to land either by spraying on the surface or by subsurface injection (i.e., chisel plow); [not applicable for types of sludge described in (11) of this Rule];
  - (b) Treated Effluent. The process of spraying treated wastewater onto a land area or other methods of application of wastewater onto a land area as a means of final disposal ~~and/or~~ or treatment;

- (23) Microscreen. A low speed, continuously back-washed, rotating drum filter operating under gravity conditions as a polishing method for removing suspended solids from effluent;
- (24) Nitrification Process. The biochemical conversion of unoxidized nitrogen (ammonia and organic nitrogen) to oxidized nitrogen (usually nitrate);
- (25) Nitrogenous Stage. A separate stage of wastewater treatment designed for the specific purpose of converting ammonia nitrogen to nitrate nitrogen;
- (26) Phosphate Removal, Biological. The removal of phosphorus from wastewater by an oxic/anoxic process designed to enhance luxury uptake of phosphorus by the microorganisms;
- (27) Polishing Pond. A holding pond following secondary treatment with sufficient detention time to allow settling of finely suspended solids;
- (28) Post Aeration. Aeration following conventional secondary treatment units to increase effluent D.O. or for any other purpose;
- (29) Post Aeration. (Cascade) A polishing method by which dissolved oxygen is added to the effluent by a nonmechanical, gravity means of flowing down a series of steps or weirs; The flow occurring across the steps or weirs moves in a fairly thin layer and the operation of the cascade requires no operator adjustment; thus, zero points are assigned even though this is an essential step to meeting the limits of the discharge permit;
- (30) Powdered to Granular Activated Carbon Feed. A biophysical carbon process that utilizes biological activity and organic absorption by using powdered or granular activated carbon; Virgin ~~and/or~~ or regenerated carbon is feed controlled into the system;
- (31) Preaeration. A tank constructed to provide aeration prior to primary treatment;
- (32) Preliminary Units. Unit operations in the treatment process, such as screening and comminution, that prepare the liquor for subsequent major operations;
- (33) Industrial Pretreatment.
  - (a) Pre-treatment Unit, Industrial. The conditioning of a waste at its source before discharge, to remove or to neutralize substances injurious to sewers and treatment processes or to effect a partial reduction in load on the treatment process which is operated by the same governing body as the wastewater treatment plant being rated;
- (b) Pre-treatment Program, Industrial - must be a State or EPA required program to receive points on the rating sheet;
- (34) Primary Clarifiers. The first settling tanks through which wastewater is passed in a treatment works for the purpose of removing settleable and suspended solids and BOD which is associated with the solids;
- (35) Pumps. All influent, effluent and in-plant pumps;
- (36) Radiation. Disinfection ~~and/or~~ or sterilization process utilizing devices emitting ultraviolet or gamma rays;
- (37) Reverse Osmosis. A treatment process in which a heavy contaminated liquid is pressurized through a membrane forming nearly pure liquid free from suspended solids;
- (38) Rotating Biological Contractors. A fixed biological growth process in which wastewater flows through tanks in which a series of partially submerged circular surfaces are rotated;
- (39) Sand Filters:
  - (a) Intermittent Biological. Filtration of effluent following septic tanks, lagoons, or some other treatment process in which further biodecomposition is expected to produce desired effluents; Hydraulic loading rates on these filters are computed in gpd/ac and have a resulting low gpm/sf (less than one);
  - (b) Recirculating biological - the same type of sand filter as defined in Subparagraph (39) (a) of this Rule with the added capability to recycle effluent back through the sand filter;
- (40) Sand or Mixed-Media Filters. A polishing process by which effluent limits are achieved through a further reduction of suspended solids;
  - (a) low rate -- gravity, hydraulically loaded filter with loading rates in the one to three gpm/sf range;
  - (b) high rate -- a pressure, hydraulically loaded filter with loading rates in the five gpm/sf range; At any rate, the loading rate will exceed three gpm/sf;



- (41) Secondary Clarifiers. A tank which follows the biological unit of treatment plant and which has the purpose of removing sludges associated with the biological treatment units;
- (42) Separate Sludge Reaeration. A part of the contact stabilization process where the activated sludge is transferred to a tank and aerated before returning it to the contact basin;
- (43) Septic Tank. A single-story settling tank in which settled sludge is in contact with the wastewater flowing through the tank; shall not be applicable for septic tank systems serving single family residences having capacity of 2,000 gallons or less which discharge to a nitrification field;
- (44) Sludge Digestion. The process by which organic or volatile matter and sludge is gasified, liquefied, mineralized or converted into more stable organic matter through the activity of living organisms, which includes aerated holding tanks;
- (45) Sludge Drying Beds. An area comprising natural or artificial layers of porous materials upon which digested sewage sludge is dried by drainage and evaporation;
- (46) Sludge Elutriation. A process of sludge conditioning in which certain constituents are removed by successive washings with fresh water or plant effluent;
- (47) Sludge Gas Utilization. The process of using sewage gas for the purpose of heating buildings, driving engines, etc.;
- (48) Sludge Holding Tank (Aerated and Nonaerated). A tank utilized for small wastewater treatment plants not containing a digester in which sludge may be kept fresh, and supernatant withdrawn prior to a drying method (i.e. sludge drying beds); This may be done by adding a small amount of air simply to keep the sludge fresh, but not necessarily an amount that would be required to achieve stabilization of organic matter. A nonaerated tank would simply be used to decant sludge prior to dewatering and would not allow long periods (several days of detention) without resulting odor problems;
- (49) Sludge Incinerators. A furnace designed to burn sludge and to remove all moisture and combustible materials and reduce the sludge to a sterile ash;
- (50) Sludge Stabilization (Chemical or Thermal). A process to make treated sludge less odorous and putrescible, and to reduce the pathogenic organism content; This may be done by pH adjustment, chlorine dosing, or by heat treatment;
- (51) Sludge Thickener. A type of sedimentation tank in which the sludge is permitted to settle and thicken through agitation and gravity;
- (52) Stabilization Lagoon. A type of oxidation lagoon in which biological oxidation of organic matter is effected by natural transfer of oxygen to the water from air (not a polishing pond);
- (53) Stand-By Power Supply. On site or portable electrical generating equipment;
- (54) Static Screens. A stationary screen designed to remove solids, including non-biodegradable particulate (floatable solids, suspended solids and BOD reduction) from municipal and industrial wastewater treatment systems;
- (55) Tertiary Treatment. A stage of treatment following secondary which is primarily for the purpose of effluent polishing; A settling lagoon or sand or coal filter might be employed for this purpose;
- (56) Thermal Pollution Control Device. A device providing for the transfer of heat from a fluid flowing in tubes to another fluid outside the tubes, or vice versa; or other means of regulating liquid temperatures;
- (57) Thermal Sludge Conditioner. A conditioning process by which heat is added for a protracted period of time to improve the dewaterability of sludge by the solubilizing and hydraulizing of the smaller and more highly hydrated sludge particles;
- (58) Toxic Materials. Those wastes or combinations of wastes, including disease-causing agents which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring; Toxic materials include, by way of illustration and not

limitation: lead, cadmium, chromium, mercury, vanadium, arsenic, zinc, ortho-nitro-chlorobenzene (ONCB), polychlorinated biphenyls (PCBs) and dichlorodiphenyl trichloroethane (DDT); and any other materials that have or may hereafter be determined to have toxic properties;

- (59) Trickling Filter. A biological treatment unit consisting of a material such as broken stone or rock over which wastewater is distributed; A high rate trickling filter is one which operated at between 10 and 30 mgd per acre. A low rate trickling filter is one which is designed to operate at one to four mgd per acre;
- (60) Trickling Filter (Packed Tower). A plug flow type of operation in which wastewater flows down through successive layers of media or filtrate material; Organic material is removed continually by the active biological fixed growth in each successive layer. This method may produce "secondary" quality effluent, or may be adapted to produce a nitrified effluent;
- (61) Vacuum Filter, Centrifuges, or Filter Presses. Devices which are designed to remove excess water from either digested or undigested sludge prior to disposal or further treatment.

*Statutory Authority G.S. 90A-37.*

#### **.0005 CLASSIFICATION OF SUBSURFACE TREATMENT AND DISPOSAL SYSTEMS**

Facilities which utilize the subsurface treatment and disposal of wastewater shall be classified as subsurface systems. All subsurface systems permitted under rules adopted by the Environmental Management Commission and those subsurface systems permitted under rules adopted by the Commission for Health Services, which require a certified operator as specified in 15A NCAC 18A .1961, shall be operated by and operator in responsible charge who possesses a certificate in subsurface system operation. Conventional septic tank systems, consisting of only a septic tank and nitrification field without pumps or other appurtenances, will not be subject to the provisions of this Section. If the subsurface system consists of septic tanks, pump tanks, siphon or pump dosing systems, sand filters, grease traps or grease interceptors, or oil/water separators and subsurface disposal of the wastewater, no additional wastewater treatment classification will be required. Wastewater treatment in excess of these components will be subject to rating as a wastewater treatment facility under .0002 (b) of this Section. All systems that are required to have only a certified subsurface operator under 15A NCAC 18A .1961 shall be deemed classified as subsurface systems. Any system that has a wastewater treatment plant, classified under 15A NCAC 8C .0002, will receive notification of the classification from the Commission.

tors, or oil/water separators and subsurface disposal of the wastewater, no additional wastewater treatment classification will be required. Wastewater treatment in excess of these components will be subject to rating as a wastewater treatment facility under .0002 (b) of this Section. All systems that are required to have only a certified subsurface operator under 15A NCAC 18A .1961 shall be deemed classified as subsurface systems. Any system that has a wastewater treatment plant, classified under 15A NCAC 8C .0002, will receive notification of the classification from the Commission.

*Statutory Authority G.S. 90A-37.*

#### **.0006 CLASSIFICATION OF LAND APPLICATION SYSTEMS**

Facilities permitted for the land application of sludge, residuals, biosolids or contaminated soil (on a designated site), shall be classified as land application systems and will be required to have an operator in responsible charge who possesses a certificate in land application/residuals operation.

*Statutory Authority G.S. 90A-37.*

#### **.0007 CLASSIFICATION OF COLLECTION SYSTEMS**

Collection systems that are operated in conjunction with wastewater treatment facilities permitted to municipalities, regional facilities or water and sewer authorities, public utilities, state-owned facilities that are Class III or Class IV and federally owned facilities that are Class II, Class III or Class IV will be subject to rating as a collection system. Any collection system, regardless of ownership, may be classified as a collection system and will be required to designate an operator in responsible charge, in the event that the Commission or its designees identify the failure to properly operate or maintain the system. The following rating system will be used to determine the classification of collection systems.

- (1) the collection system will be assigned the same classification as the current rating of the wastewater treatment facility to which the collection system is tributary; or
- (2) the collection system will be assigned the classification based on the population served by the collection system as follows, whichever would provide the lower classification: In the event that the population served cannot be determined, the

equivalent population served will be calculated, using the design flow of the treatment plant and a flow of 95 gallons per day per person.

Population of 1500 or less Class I  
Population of 1501-15,000 Class II  
Population of 15,001-50,000 Class III  
Population of 50,000 or more Class IV

- (3) Upon classification, the Commission may establish a date, by which, the permittee must designate an operator of the appropriate grade to operate the collection system.

*Statutory Authority G.S. 90A-37.*

#### **.0008 CLASSIFICATION OF SPRAY IRRIGATION SYSTEMS**

Facilities which utilize the spray irrigation of wastewater shall be classified as spray irrigation systems. If the spray irrigation system consists only of preliminary treatment, lagoons, septic tanks, pump tanks, pumps, grease traps or grease interceptors, oil/water separators, sand filters, disinfection, and chemical treatment for nutrient or algae control and the spray irrigation of the wastewater, no additional wastewater treatment classification will be required. Wastewater treatment in excess of these components, will be subject to rating under Rule .0002 (b) of this Section.

*Statutory Authority G.S. 90A-37.*

### **SUBCHAPTER 8D - POWERS AND ENFORCEMENT**

#### **.0002 CLASSIFICATION OF WATER POLLUTION CONTROL SYSTEMS**

The ~~certification commission~~ Certification Commission shall classify wastewater treatment facilities water pollution control systems in accordance with the rating scale system set out in Subchapter 8C of this Title.

*Statutory Authority G.S. 90A-35; 90A-37, 90A-43; 90A-44; 150B-23.*

#### **.0004 REVOCATION, RELINQUISHMENT OR INVALIDATION OF CERTIFICATION**

(a) The ~~certification commission~~ Certification Commission may revoke or suspend the certification of an operator in accordance with the provisions of NCGS G.S. 90A-41. Prior to the

~~commission's~~ Commission's taking action on a proposed revocation or suspension, the operator shall be given an opportunity to submit a written statement and present oral argument before the ~~commission~~ Commission at a regularly scheduled meeting. Notice of the meeting shall be delivered personally or by certified mail at least 15 days prior to the meeting.

(b) Notice of the revocation or suspension shall be delivered to the operator personally or by certified mail at least 20 days prior to the effective date of the revocation or suspension. The notice shall contain the alleged facts or conduct upon which the revocation or suspension is based and shall inform the operator of the opportunity to contest the action. The procedures to be followed shall be as specified in 15A NCAC 8A .0302.

(c) Certification may be relinquished by submission to the Certification Commission of the original certificate and a notarized statement of relinquishment.

(d) The Certification Commission may invalidate the certification of an operator for nonpayment of the annual renewal fee in accordance with G.S. 90A-40. Notice of this action shall be delivered by certified mail or personal service at least 30 days prior to the effective date of the invalidation. If the appropriate renewal fees and the required late fees are received within this period, the certificate will remain active. In order for a certificate to be revalidated, the appropriate renewal fees and late fees must be paid.

(e) The Certification Commission may issue a written reprimand to an operator in accordance with G.S. 90A-40. The reprimand shall be delivered personally or by certified mail. A copy of the letter will be kept in the operator's file and a copy will be sent to the operator's employer. The operator will be given the opportunity to put a letter of rebuttal into the file when a reprimand has been issued.

*Statutory Authority G.S. 90A-41; 143B-300; 150B-3; 150B-23; 150B-38; 150B-52.*

#### **.0005 NOTIFICATION TO ENVIRONMENTAL MANAGEMENT COMMISSION**

The ~~commission~~ Commission shall notify the Environmental Management Commission of the failure of an owner of a wastewater treatment facility water pollution control system to provide a certified operator or of the revocation or relinquishment of the certificate of any operator.

Statutory Authority G.S. 90A-35; 90A-43; 143B-300.

NCAC 14A .0101.

**.0006 RECERTIFICATION FOLLOWING  
REVOCATION OR  
RELINQUISHMENT**

(a) After revocation or relinquishment has been effective for a period of not less than 270 days, a person may apply in writing for recertification by the ~~commission~~ Commission, including in his petition any relevant facts concerning changes to conditions under which revocation or relinquishment occurred. Such facts should show clearly that applicant will comply with the laws and regulations.

(b) Within 120 days following receipt of an application for recertification, the ~~commission~~ Commission will notify the applicant by letter of its decision to deny or grant examination eligibility in accordance with procedures set out at subsection ~~8B .0102 herein~~, in 15A NCAC 8B .0102. Additional eligibility requirements including a show cause conference may be imposed by the ~~commission~~ Commission as it deems appropriate. Eligibility will only be granted if there is substantial evidence that the conditions leading to the revocation or relinquishment have been corrected.

(c) Recertification of a person as a wastewater treatment plant operator shall only occur by means of application and examination. The examinations will not be waived. The applicant shall meet the eligibility requirements set forth in Section 8B.0200 beginning with 8B .0201 except that applicant shall not be eligible for 8B .0206. Operational experience prior to revocation or relinquishment will not apply as eligibility for future recertification. Applicant shall not be eligible for temporary certification under ~~Section~~ 8B .0404.

(d) Upon notification of the ~~commission's~~ Commission's decision to deny eligibility, the applicant may appeal the decision pursuant to the procedures contained in Article 3A of Chapter 150B of the General Statutes.

Statutory Authority G.S. 90A-39; 150B-3; 150B-38.

**TITLE 21 - OCCUPATIONAL  
LICENSING BOARDS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. State Board of Cosmetic Art Examiners intends to amend rules cited as 21*

*The proposed effective date of this action is April 1, 1993.*

*The public hearing will be conducted at 10:00 a.m. on February 15, 1993 at the Grove Towers, 5th Floor, 1110 Navaho Drive, Raleigh, N.C. 27609.*

*Reason for Proposed Action: The reason for this proposed action is to define rental cosmetology booths.*

*Comment Procedures: The record shall be open for 30 days to receive written and oral comments. Written comments should be received by the N.C. State Board of Cosmetic Art Examiners by February 10, 1993, and requests to speak must be in writing and received by February 8, 1993 prior to hearing, to be considered as part of the hearing record. Comments should be addressed to Vicki R. Goudie, Executive Secretary, N.C. State Board of Cosmetic Art Examiners, 1110 Navaho Dr., Raleigh, N.C. 27609. Speaking time 5 minutes.*

**CHAPTER 14 - BOARD OF COSMETIC  
ART EXAMINERS**

**SUBCHAPTER 14A - DEPARTMENTAL  
RULES**

**SECTION .0100 - ORGANIZATIONAL  
RULES**

**.0101 DEFINITIONS**

The following definitions apply in this Chapter:

- (1) "Beauty Establishment" refers to both cosmetic art schools and cosmetic art shops.
- (2) "Board" refers to the North Carolina State Board of Cosmetic Art Examiners.
- (3) "Cosmetic Art School" refers to any place where cosmetic art, as defined by G.S. 88-2, or methods of teaching cosmetic art are taught for purposes of licensing by the Board regardless of the title of the school or program.
- (4) "Cosmetic Art Shop" refers to any building, or part thereof, wherein cosmetic art, as defined by G.S. 88-2, is

practiced, other than a cosmetic art school. Any part of a place occupied by an independent contractor that rents booth space in order to follow cosmetology or any of its practices shall be considered a separate "cosmetic art shop."

- (5) "Cosmetology School" is any cosmetic art school which teaches cosmetology as defined by G.S. 88-2, Paragraph 2, but is not a manicurist school.
- (6) "Cosmetology Student" is a student in any cosmetic art school with the exception of a manicurist student.
- (7) "Cosmetology Teacher" is any teacher who is licensed by the Board to teach the cosmetic arts.
- (8) "Manicuring" is that set of cosmetic arts related to the nails, hands, arms and feet. It includes traditional manicuring, pedicuring, arm and hand massages, and all types of artificial nails.
- (9) "Manicurist School" is a cosmetic art school which teaches only the cosmetic arts of manicuring.
- (10) "Manicurist Student" is a student in any cosmetic art school whose study is limited to the manicurist curriculum set forth in 21 NCAC 14K .0002.
- (11) "Manicurist Teacher" is a teacher who is licensed by the Board to teach only the manicuring curriculum.
- (12) "Booth" is a work station within a cosmetic art shop which is used primarily by one cosmetologist or manicurist in performing cosmetic art services for their clientele. "Booth" does not include the reception area, lavatories, common hair-drying facilities, common shampooing facilities or other areas used in common by the cosmetologists or manicurists working within a cosmetic art shop.

Statutory Authority G.S. 88-1.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Examiners of Electrical Contractors intends to amend rules cited as 21 NCAC 18B .0104, .0203, .0206, .0306, .0401, .0403, .1001, .1003, .1103 and repeal rule cited as 21 NCAC 18B .0703.*

*The proposed effective date of this action is April 1, 1993.*

*The public hearing will be conducted at 8:30 a.m. on February 18, 1993 at the Board's Office at 1200 Front Street, Suite 105, Raleigh, NC 27609.*

### *Reason for Proposed Actions:*

**21 NCAC 18B .0104** - To update rule with current job titles.

**21 NCAC 18B .0203** - To update specifications for scope of qualifying examinations and delete obsolete specifications.

**21 NCAC 18B .0206** - To allow flexibility in scheduling sites for regular semi-annual examinations.

**21 NCAC 18B .0306** - To clarify conditions of bona fide employee status under G.S. 87-43.1(3).

**21 NCAC 18B .0401** - To specify other financial information that will be considered by the Board pursuant to G.S. 87-43.2(a)(4).

**21 NCAC 18B .0403** - To clarify that a place of business can be issued licenses in different classifications where the place of business has one listed qualified individual who is qualified in different classifications.

**21 NCAC 18B .0703** - Reciprocal Agreement terminated effective July 16, 1992.

**21 NCAC 18B .1001** - To update listing of forms furnished by the Board.

**21 NCAC 18B .1003** - To update listing of publications available from the Board.

**21 NCAC 18B .1103** - To revise minimum requirements for applicants to satisfy to be considered for approval as continuing education course instructors.

*Comment Procedures: Interested persons may present statements, orally and in writing, at the public hearing or in writing prior to the hearing by mail to: Board of Examiners of Electrical Contractors, P.O. Box 18727, Raleigh, NC 27619, Attn: Robert L. Brooks, Jr.*

## **CHAPTER 18 - BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS**

### **SUBCHAPTER 18B - BOARD'S RULES FOR THE IMPLEMENTATION OF THE ELECTRICAL CONTRACTING**

## LICENSING ACT

### SECTION .0100 - GENERAL PROVISIONS

#### .0104 AUTHORIZED LEGAL ACTION BY STAFF

(a) The following members of the Board's staff are authorized to act on behalf of the Board in criminal and civil actions brought under the provisions of G.S. 87-48:

- (1) the Board's executive director;
- (2) the Board's ~~field representative coordinator; and~~ examinations and field supervisor; and
- (3) the Board's field representatives/investigators.

(b) These staff members, under the supervision of the Board's secretary-treasurer, shall have in addition to their other duties as set by the executive director, the duty to assist the secretary-treasurer in maintaining a registry of all licenses issued to electrical contractors.

(c) These staff members are authorized to give affidavits, act as plaintiffs, verify complaints, sign criminal warrants, testify in court or in other proceedings and to perform all other acts as may be required in criminal and civil actions.

*Statutory Authority G.S. 87-40; 87-42; 87-43.*

### SECTION .0200 - EXAMINATIONS

#### .0203 EXAMINATION SCOPE

(a) General. In addition to the examination scope specified in G.S. 87-42, qualifying examinations for each license ~~classifications~~ classification shall include the ~~basic~~ North Carolina ~~and federal~~ laws and rules applicable to electrical contracting, including revenue license requirements and permit and inspection requirements.

(b) Variation in Scope. The examinations for each license classification shall be based on a level of technical and practical knowledge concerning the safe and proper installation of electrical work and equipment which is appropriate and corresponds to the electrical contracting work authorized under each license classification.

*Statutory Authority G.S. 87-42; 87-43.3; 87-43.4.*

#### .0206 REGULAR SEMI-ANNUAL EXAMINATIONS

The executive director is authorized to arrange for regular semi-annual examinations to be held in the ~~vicinities of Raleigh, Asheville and~~

~~Williamston, N.C., during the months of March and September of each year. The Board may establish such other examination places and dates as it deems necessary.~~

*Statutory Authority G.S. 87-42; 87-43.3; 87-43.4.*

### SECTION .0300 - DEFINITIONS AND EXPLANATIONS OF TERMS APPLICABLE TO LICENSING

#### .0306 BONA FIDE EMPLOYEE

(a) For the exemption for electrical work done as a bona fide employee of a licensee under G.S. 87-43.1(3), the following conditions must be met:

- (1) ~~The employing licensee must hold a license issued by the Board. The restrictions of the license apply to both the licensee and any employee of the licensee. The restrictions of the employing licensee's license apply to any employee of the licensee.~~
- (2) ~~The work performed by the individual must be performed as an employee of the licensee during the hours the individual is actually working as an employee of the employing licensee, and must be restricted to the specific electrical work which the individual is doing for, and in the name of, the licensee. The employing licensee shall have control and direction of the details, methods and manner of performing the electrical work being done by the employee. The manner of payment, if any, to the person shall not be the sole determining factor concerning whether the person is an employee.~~
- (3) ~~The individual must receive compensation from the employing licensee that is reasonable related to the hours worked or the work accomplished by the individual for the licensee. The electrical work shall be performed under the supervision and direction of a listed qualified individual who is the employing licensee, or under the supervision and direction of a listed qualified individual regularly employed by the employing licensee.~~
- (4) ~~The related compensation must be reported by the employing licensee to the federal and state tax authorities as earnings of the individual employee, with appropriate deductions taken and~~

~~reported for withholding taxes and FICA contributions.~~

~~(5) Consistent with applicable laws, the individual employee must be covered by the employing licensee's workers' compensation insurance.~~

~~(b) G.S. 87-43 and G.S. 87-43.2 are interpreted as setting out an additional requirement which must be met by subject parties in order to qualify for the employee exception. These statutes are interpreted to require that all electrical work done in the name of the employing licensee be performed under the direction and supervision of a listed qualified individual regularly employed by the licensee. The Board may, at its discretion, call for satisfactory evidence that this requirement has been or is being fulfilled with respect to the individual employee and the specific work for which the exception is claimed. The employing licensee, the employee, and every listed qualified individual of the licensee shall furnish any information the Board may require, including affidavits, to evaluate and determine a claim of employee exemption.~~

~~(c) G.S. 87-43 and 87-43.2 are further interpreted as placing a joint responsibility on the employing licensee, the individual employee, and every listed qualified individual to furnish any information the Board may require to evaluate and determine a claim of employee exception. Ordinarily, the employing licensee will be expected to provide information in affidavit form on a form furnished by the Board.~~

~~(c) (d) When the information furnished to the Board does not substantiate compliance with this Rule, the individual shall be deemed to be an independent contractor rather than an employee and shall be subject to G.S. Chapter 87, Article 4.~~

~~(e) When it is determined that a claim of employee exception is not in compliance with this Rule, the Board has the duty to determine what, if any, action shall be taken with respect to the alleged employing licensee or the alleged individual employee to assure compliance with the North Carolina Electrical Contracting Licensing Act, so that the life, health, safety and property of the public may be protected.~~

Statutory Authority G.S. 87-42; 150B-11(1).

## SECTION .0400 - LICENSING REQUIREMENTS

### .0401 LICENSE APPLICANTS: REQUIREMENTS FOR EACH

## CLASSIFICATION

(a) An applicant for an electrical contracting license in each of the license classifications shall:

- (1) submit a completed application to the Board on a form provided by the Board for the license classification involved;
- (2) submit the annual license fee for the license classification involved as prescribed in Rule .0404 of this Section; and
- (3) furnish the name, signature and social security number of at least one person to serve as the listed qualified individual for the applicant's license.

(b) Corporation or Partnership. If the license applicant is a corporation or partnership, the application shall contain the names and titles of the officers or names of the partners, whichever is applicable.

(c) Intermediate and Unlimited Classifications. License applicants in the intermediate and unlimited classifications shall also furnish a bonding ability statement or a line of credit letter issued by a bank, savings bank, or savings and loan association pursuant to G.S. 87-43.2(a)(4).

(d) Special Classifications. A license applicant in the SP-EL, SP-PH, SP-WP, SP-ES or SP-SP classification must also include on the license application information verifying that the applicant is conducting a lawful business in the State of North Carolina in the license classification involved.

Statutory Authority G.S. 87-42; 87-43.2; 87-43.3; 87-43.4.

### .0403 SEPARATE LICENSE REQUIREMENTS

(a) A separate license certificate and license fee shall be required for each separate place of business with at least one listed qualified individual indicated thereon. No listed qualified individual shall be indicated on more than one license certificate at the same time except where a place of business has one listed qualified individual with licenses issued in different classifications. The listed qualified individual or individuals indicated on the separate license certificate shall be responsible for supervising and directing the electrical work performed by the separate place of business covered under the certificate.

(b) As used in G.S. 87-43, the term "each separate place of business" means:

- (1) the one place of business of a firm in the case where an electrical contracting

- firm conducts its business from only one place; and
- (2) the principal place of business and each of the other places of business of a firm in the case where an electrical contracting firm is conducting its business from more than one place.

Statutory Authority G.S. 87-42; 87-43; 87-43.2.

## SECTION .0700 - LICENSING RECIPROCITY

### .0703 RECIPROCITY: VIRGINIA

~~Pursuant to the provisions of Rule .0701 of this Section and the formal resolution agreement between the Board and the Virginia State Board for Contractors, licensees of the Virginia Board, who are non-residents of North Carolina, are eligible to apply for and obtain a North Carolina electrical contracting license and North Carolina licensees, who are non-residents of Virginia, are eligible to apply to the Virginia board and obtain a Virginia electrical contracting license in classifications as prescribed in the following table:~~

#### VIRGINIA LICENSEE ELIGIBLE FOR NORTH CAROLINA LICENSE

~~Class A  
Limited, intermediate or unlimited~~

#### ~~NORTH CAROLINA LICENSEE ELIGIBLE FOR VIRGINIA LICENSE~~

~~Intermediate  
Class A  
Unlimited  
Class A~~

Statutory Authority G. S. 87-42; 87-50.

## SECTION .1000 - DESCRIPTION OF FORMS, CERTIFICATES AND PUBLICATIONS

### .1001 FORMS PROVIDED BY THE BOARD

(a) Examination Applications. An application is provided to a person wishing to apply to take a qualifying examination for an electrical contracting license. The application is designed for an applicant to furnish the following information:

- (1) date;
- (2) name, address and telephone number;
- (3) age;

- (4) social security number;
- (5) whether or not applicant has taken a qualifying examination previously;
- (6) classification of license for which applicant wishes to qualify and amount of application-examination fee;
- (7) educational background;
- (8) experience background;
- (9) character references;
- (10) criminal convictions;
- (11) ~~(10)~~ other references or information applicant wishes the Board to consider;
- (12) ~~(11)~~ authorization for board to research all information submitted on or in support of applicant; and
- (13) ~~(12)~~ signature of applicant.

(b) Examination Review Applications. Each failing examinee is provided a form for his use in applying for a detailed review of his failed examination. This form is designed for the applicant to furnish the following information:

- (1) date;
- (2) name, address and telephone number;
- (3) social security number;
- (4) date he took his failed examination;
- (5) location in which he took his failed examination;
- (6) examination review fee; and
- (7) signature of applicant.

(c) License Applicants. Each license applicant is provided with an application form for his use in initially applying for a license. The application form is designed for the applicant to furnish the following information:

- (1) classification of license for which he is applying;
- (2) name in which he wishes the license to be issued;
- (3) business mailing and location address;
- (4) business and home telephone numbers;
- (5) whether business is partnership or corporation and, if so, the names of the partners or the names and titles of officers of the corporation;
- (6) whether business is to be operated part-time or full-time;
- (7) names, signatures and social security numbers of the listed qualified individuals to be indicated on the license;
- (8) annual license fee;
- (9) criminal convictions;
- (10) ~~(9)~~ authorization for board to research all information submitted on or in support of application;
- (11) ~~(10)~~ date; and



(12) ~~(11)~~ signature and title of applicant.

(d) License Renewal Applications. Each licensee is provided with an annual license renewal application prior to the expiration of his current annual license. This application form is designed for the licensee to furnish the following information:

- (1) name in which his license is currently issued;
- (2) whether license is to be renewed in same name or, if not, new name in which he wishes license to be renewed;
- (3) mailing and business location address;
- (4) business and home telephone numbers;
- (5) whether business is to be operated part-time or full-time;
- (6) whether business is partnership or corporation and, is if so, the names of the partners or the names and titles of officers in of the corporation;
- (7) names, signatures and social security numbers of the listed qualified individuals to be indicated on new annual license;
- (8) annual license fee;
- (9) authorization for board to research all information submitted on or in support of application;
- (10) date; and
- (11) signature and title of applicant.

(e) Request for Change of Name or Address in Which License Is Issued. A licensee wishing to change his license name or address is furnished a form for his use in requesting a change of name or address. This form is designed for the licensee to furnish the following information:

- (1) name and address in which license is currently issued;
- (2) name and address in which license is to be reissued;
- (3) whether business is to be operated part-time or full-time;
- (4) whether business is partnership or corporation and, if so, the names of the partners or the names and titles of officers in of the corporation;
- (5) certification of listed qualified individual by name and conditions of employment;
- (6) name and title of person filing request and date of request; and
- (7) signature of listed qualified individual.

(f) License Applications: South Carolina Reciprocity. These forms are designed for an applicant to furnish the same type of information as is

provided on the forms described in Paragraphs (c) and (d) of this Rule, with the following additional information:

- (1) name in which applicant's current South Carolina license is issued;
- (2) classification of applicant's South Carolina license;
- (3) number of current South Carolina license;
- (4) statement from South Carolina Licensing Board for Contractors certifying the individuals who are qualified under the applicant's South Carolina license and the extent of each individual's qualifications; and
- (5) names, signatures and social security numbers of the listed qualified individuals on South Carolina license and to be indicated as such on North Carolina license.

~~(g) License Application: Virginia Reciprocity. These forms are designed for the applicant to furnish essentially the same type of information as is provided on the forms described in Paragraphs (c), (d) and (f) of this Rule.~~

(g) ~~(h)~~ License Application: Alabama Reciprocity. These forms are designed for the applicant to furnish essentially the same type of information as is provided on the forms described in Paragraphs (c), (d) and (f) of this Rule.

(h) ~~(i)~~ License Application: Georgia Reciprocity. These forms are designed for the applicant to furnish essentially the same type of information as is provided on the forms described in Paragraphs (c), (d) and (f) of this Rule.

(i) ~~(j)~~ Bonding Ability Statement. A bonding ability statement form is provided to an applicant wishing to obtain a license in either the intermediate or unlimited classification. This form is to be completed by a bonding company duly licensed to issue performance bonds in North Carolina. The form is designed for the bonding company to state its bonding experience with the applicant and amount of performance bond the bonding company would be willing to issue to the applicant ~~at on~~ the date the form is completed and signed. The signer's power of attorney must accompany the bonding ability statement form.

(j) ~~(k)~~ Certification of Listed Qualified Individual. This form is provided to any licensee or applicant for a license whose listed qualified individual is someone other than the licensee or applicant for a license. This form is designed for the licensee or applicant for a license to certify who will be the listed qualified individual for the

licensee and that the listed qualified individual is, or will be, regularly employed by the licensee and has, or will have, the specific duty and authority to supervise and direct all electrical installation, maintenance, alteration or repair of any electric wiring, devices, appliances or equipment done in the name of the licensee.

(k) ~~(4)~~ Affidavit certifying Bona Fide Employee. This affidavit form is provided to any licensee whose relationship with his employees has been challenged and it is alleged that ~~some~~ someone other than his bona fide employee is engaged in electrical work under the auspices of his license. The form must contain the signature and title of the person completing the form and must be notarized. The form is designed for the licensee to furnish information establishing ~~that~~ compliance with the requirements of Rule .0306(a)(2) and (3) of this Subchapter.

- ~~(1) the person in question is employed by the licensee in the capacity of a mechanic (journeyman electrician);~~
- ~~(2) the employee receives compensation from the licensee which is reasonably related to the hours worked, or the work accomplished, by the employee for the licensee;~~
- ~~(3) the related compensation paid to the employee is reported to federal and state tax authorities as earnings of the individual employee with appropriate deductions taken and reported for withholding taxes and FICA contributions;~~
- ~~(4) consistent with applicable laws, the employee is covered by the licensee's workers' compensation insurance; and~~
- ~~(5) all work performed by the employee is performed under the direction and supervision of a listed qualified individual regularly employed by the licensee.~~

Statutory Authority G.S. 87-42; 150B-11.

### **.1003 PUBLICATIONS AVAILABLE FROM THE BOARD**

The following publications are available from the Board:

- (1) Laws applicable to electrical contracting in the State of North Carolina;
- (2) Rules of the Board, including rules of general applicability and rules applicable to special restricted classifications;
- (3) Information booklet for persons applying to take the qualifying examination for an electrical contracting license in the limit-

~~ed, intermediate or unlimited each license classification;~~

- ~~(4) Annual Continuing Education Information Booklet; and~~
- ~~(5) (4) The National Electrical Code, NFPA 70, at the current price. ; and~~
- ~~(5) The North Carolina Building Code, Volume IV Electrical, at the current price.~~

Statutory Authority G.S. 87-42; 150B-11.

## **SECTION .1100 - CONTINUING EDUCATION**

### **.1103 MINIMUM REQUIREMENTS FOR COURSE INSTRUCTOR APPROVAL**

(a) Each course instructor shall submit an application for continuing education course instructor approval to the Board on a form provided by the Board by March 1 of the year prior to the license period (July 1 - June 30) in which the course will be offered. The application shall include but is not limited to:

- (1) The name of the instructor;
- (2) Instructor's address and telephone number;
- (3) The name of the course sponsor;
- (4) Course title;
- (5) Course contact hours; and
- (6) Qualifications of instructor.

~~(b) To qualify as an approved continuing education course instructor:~~

- ~~(1) The instructor shall have professional or trade experience evidenced by an appropriate license, certification or degree; or~~
- ~~(2) The instructor shall have other recognized expertise in the electrical industry.~~

(b) Beginning March 1, 1994, no applicant shall be considered for approval as a continuing education course instructor unless the applicant satisfies at least one of the following:

- (1) Be a "qualified individual" as defined in G.S. 87-41.1(1) and certified as such by the Board pursuant to G.S. 87-42. This applicant will be considered for approval as a continuing education instructor to teach courses in the same or lower license classification in which the applicant is certified as a "qualified individual" as follows:

Unlimited - Any License Classification

Intermediate - Intermediate, Limited, SP-SFD and any SP-Restricted Classification

Limited - Limited, SP-SFD and any SP-Restricted Classification

SP-Restricted - Only in same SP-Restricted Classification

(2) Have passed the Continuing Education Instructor Examination prescribed and conducted by the Board. This applicant will be considered for approval as a continuing education instructor to teach courses in any license classification.

(3) Be a "qualified code-enforcement official" as defined in G.S. 143-151.8(a)(5) and certified as such by the North Carolina Code Officials Qualification Board as holding qualifications for an electrical inspector in Standard Level III, Standard Level II or Standard Level I categories. This applicant will be considered for approval as a continuing education instructor to teach courses in license classifications as follows:

Standard Level III - Any License Classification

Standard Level II- Intermediate, Limited, SP-SFD and any SP-Restricted Classification

Standard Level I - Limited, SP-SFD and any SP-Restricted Classification.

(4) Be found by the Board to have professional or trade experience or other special qualifications qualifying him to teach courses in the license classification or classifications determined by the Board.

(c) The Board may deny an application if it finds that the applicant has failed to comply with the terms of any agreement as provided in Paragraph (g) of this Rule or the rules of the Board.

(d) ~~(e)~~ The course instructor application shall be submitted together with the application for continuing education course sponsor approval as prescribed in Rule .1102 of this Section.

(e) ~~(d)~~ The Board shall approve or deny applications at its April meeting.

(f) ~~(e)~~ Appeals from denials shall be heard by the Board at a scheduled meeting in May.

(g) ~~(f)~~ Upon approval of the application, each approved instructor shall agree to conduct courses in accordance with this Section and shall indicate his agreement by signing a continuing education instructor agreement form provided by the Board.

Statutory Authority G.S. 87-42; 87-44.1.

\*\*\*\*\*

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Examiners in Optometry intends to adopt rules cited as 21 NCAC 42B .0113, .0203 - .0204, 42E .0104, 42L .0004, 42M .0001-.0006; and amend rules cited as 21 NCAC 42A .0001, .0005, 42B .0101, .0103, .0104, .0107, .0110, .0201-.0202, .0302, 42E .0102-.0103, .0201, .0203, .0301-.0302, 42L .0002, .0005.

(Editor's Note: The Board is proposing to adopt a new rule cited as 21 NCAC 42L .0004 and renumber existing rules .0004 - .0015 to .0005 - .0016.)

**The** proposed effective date of this action is April 1, 1993.

**The** public hearing will be conducted at 9:00 a.m. on February 1, 1993 at the office of Womble, Carlyle, Sandridge & Rice, 227 Fayetteville Street Mall, 800 Wachovia Building, Raleigh, NC 27602.

### **Reason for Proposed Action:**

21 NCAC 42A .0001 - To provide the Board's phone number and fax number.

21 NCAC 42A .0005 - To define the term "Executive Director".

21 NCAC 42B .0101 - To update list of approved schools.

21 NCAC 42B .0103, .0104 and .0110 - Replace references to "Board secretary" with "Board office".

21 NCAC 42B .0107 - To revise and update the requirements to take the clinical practicum examination.

21 NCAC 42B .0113 - To provide a process for applying for reexamination.

21 NCAC 42B .0201-.0202 - To revise the procedure for notifying the Board of beginning practice or opening a branch office.

21 NCAC 42B .0203 - To require a relief optometrist to obtain a duplicate license before beginning practice.

21 NCAC 42B .0204 - To set up procedures for ceasing to practice.

21 NCAC 42B .0302 - To revise the procedure for Board approval of continuing education courses.

21 NCAC 42E .0102-.0103 - To update require-

ments concerning professional responsibility and dispensing of legend drugs.

21 NCAC 42E .0104 and .0201 - To require optometrist to maintain independent control over his practice and to assure physical access as needed to his practice location.

21 NCAC 42E .0203 - To provide that optometrists may practice as staff optometrists or independent contractors in certain circumstances.

21 NCAC 42E .0301-.0302 - To define the types of disciplinary action the Board may take and to define additional practices considered to be unethical.

21 NCAC 42L .0002 and .0005 - To clarify when "notice" is received for purposes of requesting an administrative hearing and for filing answer to a notice of hearing.

21 NCAC 42L .0004 - To create a committee on investigations.

21 NCAC 42M .0001-.0006 - To provide for Board oversight of optometrist/preceptors and studepreceptees.

**Comment Procedures:** Requests to make oral comments at the hearing must be received by the Board no later than 10:00 a.m. on January 25, 1993. Oral comments may be limited to 3 minutes. Written comments must be received by February 15, 1993. The Board's address is P.O. Drawer 609, Wallace, NC 28466-0609.

## CHAPTER 42 - BOARD OF EXAMINERS IN OPTOMETRY

### SUBCHAPTER 42A - ORGANIZATION

#### .0001 LOCATION

The location of the office of the Board is ~~the office address of the Secretary of the Board~~, 321 E. Main Street, P.O. Drawer 609, Wallace, North Carolina, 28466-0609. The Board's phone number is (919) 285-3160; its WATS number is (800) 426-4457 (in-state only); and its fax number is (919) 285-4546.

Statutory Authority G.S. 90-117.5.

#### .0005 DEFINITIONS

The following definitions apply to 21 NCAC 42 only:

- (1) The term "Board" refers to the North Carolina State Board of Examiners in Optometry.
- (2) The term "President" refers to the Presi-

dent of the North Carolina State Board of Examiners in Optometry.

- (3) The term "Secretary" refers to the Secretary-Treasurer of the North Carolina State Board of Examiners in Optometry.

- (4) The term "Executive Director" refers to the Executive Director of the North Carolina State Board of Examiners in Optometry.

Statutory Authority G.S. 90-117; 90-117.5.

### SUBCHAPTER 42B - LICENSE TO PRACTICE OPTOMETRY

#### SECTION .0100 - LICENSE BY EXAMINATION

##### .0101 GRADUATE OF APPROVED SCHOOL

(a) The Board may grant recognition and approval to a school or college of optometry, deny or rescind recognition and approval, or make any recognition and approval granted by the Board conditional or probational, based on the Board's determination of the quality of the educational programs and offerings of the school or college of optometry. Their optometric educational programs having been duly accredited by the Council of Optometric Education of the American Optometric Association and recommended to the Board by the International Association of Boards of Examiners in Optometry as worthy of approval, the following accredited schools and colleges of optometry are hereby recognized and approved:

- (1) University of Alabama in Birmingham  
School of Optometry  
University Station  
Birmingham, AL 35294
- (2) University of California, Berkeley  
School of Optometry  
Minor Hall  
Berkeley, CA 94720
- (3) Southern California College of Optometry  
2575 Yorba Linda Blvd.  
Fullerton, CA 92631
- (4) Ferris State College  
College of Optometry  
Big Rapids, MI 49307
- (5) University of Houston  
College of Optometry  
~~4901 Calhoun~~  
Houston, TX 77004 - 6052
- (6) Illinois College of Optometry  
3241 South Michigan Avenue

- Chicago, IL 60616
- (7) Indiana University  
School of Optometry  
800 East Atwater  
Bloomington, IN 47405
- (8) New England College of Optometry  
424 Beacon Street  
Boston, MA 02115
- (9) State University of New York  
State College of Optometry  
100 East 24th Street  
New York, NY 10010
- (10) The Ohio State University  
College of Optometry  
338 West Tenth Avenue  
Columbus, OH 43210
- (11) Pacific University  
College of Optometry  
2043 College Way  
Forest Grove, OR 97116
- (12) Pennsylvania College of Optometry  
1200 West Godfrey  
Philadelphia, PA 19141
- (13) Southern College of Optometry  
1245 Madison Avenue  
Memphis, TN 38104
- (14) University of Waterloo  
School of Optometry  
Faculty of Science  
Waterloo Ontario Canada N2L 3G1
- (15) Inter American University of Puerto Rico  
School of Optometry  
G.P.O. Box 3255  
San Juan, PR 00936
- (16) University of Missouri-St. Louis  
School of Optometry  
8001 Natural Bridge Road  
St. Louis, MO 63121
- (17) University of Montreal  
~~School of Optometry~~  
Ecole d'optometrie  
3750 Jean Brilliant  
Case Postale 6128, Succursale "A"  
Montreal, P.Q. Canada H3C 3J7
- (18) Northeastern State University  
College of Optometry  
1001 N. Grand  
Tahlequah, OK 74464
- (19) Southeastern University of the Health  
Sciences  
College of Optometry  
1750 N.E. 168th St.  
North Miami Beach, FL 33162

(b) The Board may request a copy of the Council of Optometric Education's accreditation report

on each school or college recognized and approved by the Board and for each school or college which has requested recognition and approval or for which the Board is considering recognition and approval.

*Statutory Authority G.S. 90-117.5; 90-118(a),(b).*

#### **.0103 APPLICATION FOR LICENSURE BY EXAMINATION**

One desiring to obtain the application form for licensure by examination shall specify the date of the examination when requesting the application form. The application shall be made on Form BEO-1 supplied by the Board. The completed application form and the proper fee must be received by in the Secretary Board office 60 days prior to the examination date.

*Statutory Authority G.S. 90-118; 90-117.5.*

#### **.0104 APPLICATION FOR LICENSURE BY RECIPROCITY**

Requests for application for licensure under the provisions of G.S. 90-118.5 shall be accompanied by the appropriate fee and shall be made on Form BEO-1 supplied by the Board. The application and supporting documents required by G.S. 90-118.5 must be received by in the Secretary Board office 60 days prior to the date of the clinical practicum examination for which the application is being made.

*Statutory Authority G.S. 90-117.5; 90-118.5.*

#### **.0107 WRITTEN EXAMINATION**

(a) Each applicant must submit evidence of having reached the recommended levels of acceptable performance on ~~all parts of~~ the National Board examinations given by the National Board of Examiners in Optometry ~~within the ten years on or after the April, 1978 administration in one of the following formats and under the following conditions~~ prior to Board approval of his application to take the clinical practicum examination administered by the Board and shall ~~cause to be furnished a true written copy of the~~ authorize the release of his official score report of such by the National Board examinations to the Secretary of the Board prior to the approval by the Board of his application to take the clinical practicum examination.

- (1) April, 1978 through August, 1986 administrations: passing scores on Parts I, IIA, and IIB, with scores of not less than 75 in Section 7 (Pathology)

and Section 9 (Pharmacology) on the Part IIB examination. Score of not less than 75 on the National Board's Treatment and Management of Ocular Disease ("TMOD") examination.

(2) April, 1987 through August, 1992 administrations: passing scores on the Basic Science examination and Clinical Science examination of the National Board, with scores of not less than 75 on the Ocular Disease/Trauma and Clinical Pharmacology sections of the Clinical Science examination. A score of not less than 75 on the National Board's TMOD examination.

(3) April, 1993 and thereafter: passing scores on Basic Science and Clinical Science Examinations of the National Board, with a score of not less than 75 on the Ocular Disease/Trauma component within the Clinical Science examination, and a score of not less than 75 on either the TMOD component within the Clinical Science examination, or on the equivalent stand-alone TMOD examination.

(b) For candidates with passing scores on at least one National Board examination part under different formats and time periods described in (a)(1) and (a)(2) of this Rule, the following equivalences shall apply:

(1) Parts I and IIA are the equivalent of Basic Science.

(2) Part IIB is the equivalent of Clinical Science without the inclusion of TMOD.

Further, each applicant shall submit evidence of having taken and passed the Treatment and Management of Ocular Disease Examination given by the National Board of Examiners in Optometry under the auspices of the International Association of Boards of Examiners in Optometry (IAB). This examination, coupled with the section parts of the Basic and Clinical Science examinations, to wit: Basic Pharmacology within the Basic Science examination and Ocular Disease/Trauma and Clinical Pharmacology within the Clinical Science examination, form the basis of the Board's evaluation of a candidate's didactic ability to use and prescribe pharmaceutical agents in the practice of optometry. Therefore, a minimal score of 75 is required on each of the herein-cited section scores of the National Board and on the IAB therapeutic examination.

—(b)—Applicants who took and passed the Na-

tional Board under the old Content Outline will be required to submit minimum scores of 75 on each of Sections 7 and 9 of that outline, along with a passing score on the Treatment and Management of Ocular Disease Examination.

*History Note: Statutory Authority G.S. 90-117.5; 90-118.*

## .0110 PASSING SCORE

An applicant must attain an average grade of 75 on each part of the clinical practicum examinations to pass the examination and be issued a license. No applicant who has received a grade of less than 60 on any part of the clinical practicum examination shall be considered eligible for licensure even though his overall clinical practicum score may average 75. Each applicant will be notified by the Secretary Executive Director as to his success or failure after the results of the examination have been determined by the Board.

*Statutory Authority G.S. 90-117.5; 90-118.*

## .0113 REEXAMINATION

(a) A completed application, except for school transcripts, birth certificate, and National Board scores, is required in case of reexamination. The completed application accompanied by the proper fee must be received in the Board office 60 days prior to the examination date.

(b) Any applicant who has failed the clinical practicum examination three times after the effective date of this Rule shall be deemed ineligible to apply for reexamination until he successfully completes an additional course of study in clinical optometry encompassing at least one academic year, such course to be approved by the Board. Such applicant shall submit evidence satisfactory to the Board of the additional study at the time he makes application for reexamination.

*Statutory Authority G.S. 90-117.5; 90-118.*

## SECTION .0200 - RESPONSIBILITY TO SUPPLY INFORMATION

### .0201 BEGINNING PRACTICE; RELOCATING PRACTICE

Upon Within 10 days of beginning practice, a licensee shall notify the Secretary of the Board in writing as to the full and complete mailing address, including the street address, of his office and the telephone number of such office. If at any time any office is relocated, the licensee involved

shall notify the ~~Secretary~~ Board of his new office address and telephone number. The address so identified shall constitute ~~the~~ his primary practice address and the address to which all information pertaining to his licensure shall be addressed. ~~If, for any reason, the licensee ceases to practice, he shall so notify the Secretary.~~

Statutory Authority G.S. 90-117.5.

## **.0202 BRANCH OFFICE**

Before opening or beginning practice in a branch office, an optometrist ~~shall apply for~~ must obtain a duplicate license to be displayed in the branch office. ~~This~~ The application for a branch office license must be made on Form BEO-3, which can be acquired from the ~~Secretary~~ Board. If in the opinion of the Board Rules 42E .0102(2) and 42E .0102(4) of this Chapter are met, the ~~Secretary~~ Board shall notify the optometrist making application of the approval of the request and upon receipt of the required fee such duplicate license shall be issued by the Board for the purpose of display in the branch office for which it is ~~used~~ issued in compliance with G.S. 90-118.2 and 90-118.4. A duplicate license is not transferable from one practice location to another, nor from one practitioner to another. ~~In the event that a practice is discontinued at a location for which a duplicate license has been issued, the practitioner involved shall return the license to the Secretary for cancellation.~~ Within the meaning of this section a nursing home is considered a branch office when there is an agreement between the optometrist and/or his representative that he will provide optometric services on a scheduled basis within the nursing home; provided however, any optometrist who accepts a request to make emergency calls to patients at a nursing home within 20 miles of his practice location(s) as reflected in the Board records is not required to obtain a duplicate license for that location.

Statutory Authority G.S. 90-117.5; 90-118.2; 90-118.4.

## **.0203 TEMPORARY OR RELIEF OPTOMETRIST**

Before providing optometric services on a temporary or relief basis for which he will receive compensation, for any period of time, an optometrist must first obtain a duplicate license for each location at which he will provide such services. The identity of such temporary or relief optometrist should clearly appear in the record of each

patient to whom such optometrist renders optometric services.

Statutory Authority G.S. 90-117.5; 90-118.2; 90-118.4.

## **.0204 CEASING PRACTICE**

(a) In the event an optometrist shall cease to practice at any practice location as defined in Rules .0201 and .0202 of this Section, the optometrist shall notify the Board in writing within ten days of ceasing practice, indicating the reason for discontinuing practice and the disposition of patient records.

(b) In the event that a licensee discontinues practice at a location for which a duplicate license has been issued, the licensee shall return the license to the Board for cancellation within 30 days.

(c) On ceasing practice at any location, the licensee shall notify those patients whose records he retains in accordance with Rule 21 NCAC 42E .0102(5) of the disposition and/or availability of such records. Such notice shall be given by direct mail or through a public announcement in a newspaper of general circulation in the county or counties wherein the patients reside. If such notice is given by publication, such publication shall occur not less than weekly for a period of not less than ninety days.

(d) Any licensee ceasing practice shall maintain control and custody of the records located at that practice location until such time as such records are transferred to the patients or to the custody of another practitioner similarly licensed.

Statutory Authority G.S. 90-117.5; 90-118.2.

## **SECTION .0300 - ANNUAL LICENSE RENEWAL**

### **.0302 CONTINUING EDUCATION**

(a) Each optometrist holding a certificate of registration shall take annual courses of study approved by the Board related to and essential to the practice of optometry as defined in G.S. 90-114. It is the intent of the Board that this requirement be met by the taking of courses whose content and quality of presentation are reasonably assured to the end that the licensee's abilities in order to meet the public demand of acceptable standards of care are enhanced and that currency of knowledge is insured. ~~demands of quality of care, to ensure appropriate standards of care, and to ensure currency of knowledge.~~



(b) It is the responsibility of each licensee to determine if a course has been approved by the Board prior to the taking of the course and submitting it for credit.

(c) No course or course offering will be considered for approval unless the vendor or sponsor has submitted to the Board no later than 30 days prior to the offering of the course information deemed sufficient by the Board as to the course title, course format, course content and learning purpose, lecturers including curriculum vitae, dates courses are offered, city and state where offered, and the name, address, and telephone number of the vendor or sponsor and the contact person(s) to whom inquiries can be made, without first having been classified by and in accordance with the standards of the National Continuing Education Classification System of the International Association of Boards of Examiners in Optometry (IAB).

(d) Those courses that ~~have been~~ are approved, including the type and number of hours of credit, will be entered into the Board's central data base and the vendor or sponsor notified. Information concerning those courses that have been approved will be made available to any licensee making inquiry concerning course approval, transmitted by the Board to the IAB's central registry within ten days of the receipt by the Board of the course classification. This information will be available to all licensees and vendors from either the Secretary of the Board or from the National Classification System of the International Association of Boards of Examiners in Optometry.

(e) The Board will maintain continuing education data on-line in its central data base for a minimum period of five years preceding the next annual license renewal date. A yearly listing of credits shall be furnished each licensee at the time of license renewal. Additional reports will be available on request and the payment of a transcript fee not to exceed five dollars (\$5.00). Telephone inquiries as to current status of continuing education hours may be made during normal business hours.

(f) Notification of the number of hours required by the Board for license renewal shall be given to each licensee at the time the licensee receives notice of annual license renewal. Such notice shall state the number of hours of approved continuing education that will be required in the following year in order to renew a license for the second following year. The number of required continuing education hours is 20.

(g) In any calendar year no less than ~~one-third,~~ or five hours, whichever is greater, nine hours of

the continuing education requirement must be in courses within the area of ocular or general pharmacology, diagnosis, and therapeutics, or advanced clinical procedures. It is expected that courses certified to meet this special requirement will be of sufficient length and depth to sufficiently address the subject matter in the course descriptions and will be taught by individuals who are appropriately qualified and have an acknowledged expertise in the area taught.

(h) Courses of self-study where organized material is presented and written evaluations are later made are eligible for approval provided the vendor or sponsor has submitted the course or courses for classification approval as described in this Rule prior to its being offered to the licensee. However, no licensee shall receive credit for more than four hours of educational credit by this means in any calendar year.

(i) Courses that are classified as practice administration may be accepted by the Board for credit provided that no more than three hours ~~or 15 percent~~ of the total number of continuing education hours required, ~~whichever is less,~~ will be accepted within one calendar year for the purposes of credit.

(j) All courses accepted for credit must be taken within the calendar year for which the credit is applied; provided, however, that any course dependent upon an examination for successful completion may be certified to the Board following examination even if the examination or the results thereof are not available until the next calendar year.

(k) Attendance at any course or courses approved by the Board must be for the requisite period. It is the responsibility of the vendor or sponsor of the course to assure compliance with this requirement in accordance with Board policy and to so certify to the Board ~~or its agent~~ at the appropriate time. Documentation of attendance may be transmitted:

(1) ~~By way of the International Association of Boards of Examiners in Optometry's central registry of continuing education in accordance with the guidelines established by the registry;~~

(2) By the vendor or sponsor of the education provided the documentation is in a form acceptable to the Board and contains the following information:

- (A) Course title and classification verification;
- (B) Vendor or sponsor identification;
- (C) Name of and license number of North



Carolina licensee;

(D) Vendor or sponsor's attestation or verification of attendance.

(32) By any licensee directly to the Board provided that the attendance verification form utilized by the vendor has been approved by the Board ~~or the IAB's Central Registry of Continuing Education~~, has been completed properly by the vendor or sponsor of the education and by the licensee, and has been properly validated or certified, and the original form, and not a photocopy or facsimile, is submitted.

(I) Electronic transfer of attendance records in a data base format compatible to the Board's ~~or to the IAB's~~ data management system is acceptable; provided, however, the Board may at any time within three years of the date of transfer call for a hard copy verification if in its opinion such verification is necessary.

(m) The continuing education requirement shall be waived only in cases of certified illness, or upon evidence satisfactory to the Board that the applicant for renewal was unable to meet the requirement because of undue hardship.

*Statutory Authority G.S. 12-3.1; 90-117.5; 90-123.1.*

## SUBCHAPTER 42E - MODE OF PRACTICE

### SECTION .0100 - RESPONSIBILITY FOR PATIENTS

#### .0102 PROFESSIONAL RESPONSIBILITY

In keeping with the professional code, ~~all optometrists~~ the optometrist shall:

- (1) attend to the visual needs of all those seeking ~~their~~ his services without regard to financial remuneration;
- (2) maintain adequate equipment and instruments in ~~their~~ his offices at all times to assure proper and complete examination of patients. Such equipment and instruments shall include, but not be limited to, the following: a direct ophthalmoscope; an indirect ophthalmoscope; condensing lenses; proper instrumentation for foreign body removal; biomicroscope; instrument for plotting central and peripheral fields; ~~corneal~~ applanation tonometer; distance and near acuity charts; test objects for stereopsis and fusion; color vision testing apparatus; refractor, trial

frame or phorometer with trial case lenses; ~~ophthalmometer~~ keratometer; and retinoscope;

(3) sterilize according to usage all instruments or equipment used in the treatment of optometric patients, including those instruments or equipment used for the removal of foreign bodies from the external eye or its adnexa. All optometric offices shall follow infection control recommendations as set forth from time to time in the infection control manual as recommended by the American Optometric Association's Committee on Primary Care and Ocular Disease, or in the clinical guidelines of the American Optometric Association's Clinical Guidelines and Quality Assurance Coordinating Committee or their successors;

(34) assist his patients in whatever manner possible in obtaining further care when in ~~their~~ his opinion other than ~~their~~ his care is needed;

(45) maintain adequate and available records on every patient containing case history, findings, diagnosis, treatment, and disposition. In compliance with this requirement, the patient record shall include the name of the patient's family physician or any other physician who may be consulted with regard to the care of the patient. The name and dosage of any medication prescribed shall be recorded with the diagnosis and instructions to the patient concerning follow-up. In any instance where a therapeutic medication, other than a medication being topically applied, is prescribed the patient record should indicate that the consulting physician noted on the record is informed. Communication is desirable at the time of prescribing systemic medication; however, in the event communication is not possible at that moment or if previous protocols have been agreed to by the consulting physician, the record should indicate such consultation or communication took place within 72 hours and whether such consultation or communication occurred by telephone, in writing, or otherwise;

(6) retain full and independent control of and responsibility for patient records. This requirement does not preclude the licensee from providing copies of patient spec-

tacle prescriptions for subsequent optical services, nor does it preclude the licensee from providing copies of patient records to any entity with the consent and authorization of the patient. Patient records shall be maintained by the optometrist responsible for such records for a period of not less than 5 years following the last entry into the patient's chart;

- (57) treat all information concerning their his patients as confidential and not to be communicated to others except when authorized to do so by the patient or required by law;
- (8) have an established and appropriate procedure for the provision of eye care to his patients in the event of an emergency outside of normal professional hours, or when the licensee is not available due to vacation, personal illness, attendance at professional meetings or continuing education programs, or other absences of a similar nature. Patients shall be informed of such procedure. The procedure referred to herein may include, but is not limited to, cooperative arrangements with another licensed optometrist or a physician licensed under North Carolina General Statutes Chapter 90, Article 1, a telephone answering system or pager; and/or written or posted instructions to the patient;
- (9) maintain full and independent control of the terms and conditions of any professional liability insurance coverage pertaining to his services.

*Statutory Authority G.S. 90-18; 90-114; 90-121.2; 90-127.2.*

### .0103 PRESCRIPTIONS

(a) All prescription forms shall conform to state and federal statutes governing such forms and shall include the name, address, state licensure number, and the Drug Enforcement Administration number of the prescriber, if applicable. The optometrist shall be responsible for providing appropriate safeguards within his practice to prevent the unauthorized use or diversion of his prescription forms, and shall immediately notify the Board upon determining that prescription blanks might be missing or misused. Should missing prescription blanks bear his DEA number, the optometrist shall also notify the North Carolina State Board of Pharmacy, giving that board the date he deter-

mined that the prescriptions blanks were missing or misused, the number missing, and any information that could be of help in preventing unauthorized use of the prescription blanks.

(b) In the event that legend drugs being prescribed by the optometrist are dispensed by the optometrist, the optometrist shall cause the following written or printed information to be given to the patient for each such drug dispensed at the time the drug is dispensed:

- (1) date of issuance;
- (2) name and address of patient;
- (3) name, address and telephone number of prescriber;
- (4) name, strength, dosage form and quantity of drug dispensed;
- (5) the number of refills, if authorized;
- (6) route of administration of drug dispensed; and
- (7) directions for use.

(bc) ~~On request within~~ Within one year of examination, the optometrist must furnish to a patient may request and is entitled to and shall receive a copy of the patient's their his spectacle or contact lens prescription. The prescription may show a statement of caution or a disclaimer if such a statement or disclaimer is supported by appropriate findings and documented patient records. An expiration date of not less than one year from the date of the prescribing examination shall appear on every such prescription.

(ed) A prescription for contact lenses shall explicitly state that it is for contact lenses and indicate specify the lens type and all specifications necessary for the ordering and fabrication of the lenses. Words or phrases such as "OK for contact lenses", "fit with contact lenses", "contact lenses may be worn", or similar wording do not constitute a contact lens prescription. Until all the requirements of a satisfactory fit of contact lenses have been determined by the prescriber, the contact lens prescription cannot be written. All contact lenses used in the determination of a contact lens prescription are considered to be diagnostic lenses. At such time that it has been determined that a prescription can be written, such prescription may show a statement of caution or a disclaimer if such a statement or disclaimer is supported by appropriate findings and documented patient records. An expiration date consistent with the type and modality of use of the contact lens being prescribed shall appear on every such prescription. In the event that in the professional opinion of the prescribing optometrist, a patient is not adhering to appropriate regimens of care and

follow-up with regard to the continuing use of contact lenses, the optometrist may terminate his optometric care of that patient and notify the patient that he is terminating such relationship and the reasons for doing so.

Statutory Authority G.S. 90-114; 90-127.2; 90-127.3.

#### **.0104 ACCESS TO AND CONTROL OVER PRACTICE**

(a) The licensee shall maintain full and independent control of the scheduling and availability of optometric services to be provided by that licensee.

(b) Each licensee is responsible for and shall retain full and independent control of information disseminated to the public through any advertising or other commercial medium when such information relates to optometric services being provided by the licensee. When practicing adjacent to or in proximity to a retail optical establishment that is expected to benefit from the sales of optical goods as a result of the optometrist's prescriptions, the optometrist is required to maintain absolute control over any print or other media advertising which may promote the use of his services, whether or not such advertising is paid for or sponsored by the optometrist.

(c) The licensee shall have physical access to his practice location at all times.

(d) Whenever any licensee enters into a lease or rental agreement to locate his practice within the exterior walls of a commercial or retail establishment, that practice location shall include an outside entrance to assure such access as may be needed by the optometrist and his patients to his optometric practice at all times. Further, the practice location within the commercial or retail establishment may have interior access from and to a public aisle, but such interior access shall not pass through or into any retail optical space within the establishment to the effect that the optometric practice shall be operated under the complete control of the optometrist.

(e) Any lease or rental agreement through which a licensee may lease space for the operation of his optometric practice which impermissibly infringes upon the independent judgment of the optometrist or which impermissibly restricts the optometrist's professional judgment with regard to the operation of his practice or the care of his patients is in violation of these Rules and the Optometry Act. Provisions within a lease or provisions within any master lease to which a lease is subject which

would violate this rule include, but are not limited to, provisions concerning: malpractice liability insurance; regulation of the optometrist's business hours beyond 50 hours a week, or on weekends, religious holidays, and federal or state holidays; custody and control of the optometrist's patient records; the scheduling or rescheduling of patient examinations or follow-up care; the setting or discounting of professional fees; professional competition and advertising; and, the specification of particular drugs or optical goods to be dispensed to or prescribed for a patient. Any lease which is subject to a master lease to which the optometrist does not have ready access for purposes of assuring compliance with this Rule shall be deemed in violation of this Rule and Rule .0201 of this Subchapter.

Statutory Authority G.S. 90-117.5; 90-121.2.

### **SECTION .0200 - ETHICS**

#### **.0201 GENERAL**

(a) The optometrist shall conduct his practice in a decorous, dignified and professional manner and in keeping with the rules as promulgated by this Board.

(b) It is the continuing responsibility of the optometrist to maintain independent control over his practice in order to assure his independent professional judgment is not comprised in the rendering of patient care.

(b)c) In any printed or oral reference by an optometrist to his practice, the primary designation must be "optometrist", "optometry", or "doctor of optometry".

Statutory Authority G.S. 90-121.2.

#### **.0203 CONSULTANT; ADVISOR, STAFF OPTOMETRIST, OR INDEPENDENT CONTRACTOR**

(a) An optometrist may:

- (1) be engaged as a consultant, or advisor, staff optometrist, or independent contractor for industrial plants where industrial vision programs are being or have been instituted; or
- (2) be engaged as a staff optometrist, independent contractor, or optometric administrator for health programs sponsored or funded by any agency of municipal, county, state or federal government, or research organizations or educational institutions, insurance com-

panies, health maintenance organiza-  
tion, or hospitals.

(b) In acting in the capacity of consultant, advisor, independent contractor, or staff optometrist, the optometrist shall at all times remain cognizant of his professional responsibilities and shall with demeanor, decorum and determination retain his right of independent professional judgment and title in all situations and circumstances as he would in his own office. If at any time the right of independent professional title and judgment is abridged by the party or parties engaging the optometrist's services, it shall be mandatory upon the optometrist to resign or terminate the position as consultant, advisor, ~~or~~ staff optometrist, or independent contractor and in so doing the intent of G.S. 90-125 would not be violated.

*Statutory Authority G.S. 90-117.5; 90-125.*

## SECTION .0300 - UNETHICAL PRACTICES DEFINED:REVOCATION OF LICENSE

### .0301 PUNISHMENT FOR VIOLATION OF RULES

~~In addition to the disciplinary action on the part of the Board for violations of the rules of practice set forth in Sections .0100 and .0200 of this Subchapter, and pursuant to G.S. 90-121.2, the Board may administer the punishment of private reprimand, suspension from the practice of optometry for a period not exceeding 12 months, or revocation of license when any licensed optometrist practicing in the state is found to be guilty of any of the practices found in Rule .0302 of this Subchapter. The Board may invoke such disciplinary measures as it deems appropriate, including issuing a letter of warning or caution, reprimand, censure, suspension of a license, revocation of a license, and probation for violation of any statute governing the practice of optometry or of any Rule adopted by the Board.~~

*Statutory Authority G.S. 90-117.5; 90-121.2.*

### .0302 UNETHICAL PRACTICES

It is unethical for an optometrist to:

- (1) solicit by means of advertising considered by the Board to be untruthful, false, misleading, deceptive, bait-and-switch, or fraudulent;
- (2) allow, permit, or otherwise condone by his failure to act in a timely manner to prevent his name, his practice, or his practice location from being presented to

the public through any type of advertising which the optometrist did not pay for, purchase, or otherwise sponsor. This prohibition includes advertising which primarily advertises the services of a person or business other than the optometrist or his practice, but which refers to or identifies the optometrist either directly or by inference or implication;

- (3) discount his professional fees as an enticement for the sale of optical goods by himself or any optical dispensary located adjacent to or in close proximity to his practice;

- (2 4) fail to use the word "optometrist", the abbreviation "O.D.", or the words "doctor of optometry" whenever the optometrist's name appears in connection with his practice of optometry;

- (3 5) fail to list the name of each practitioner on any sign or lettering denoting the location of the practice or in any advertising promoting a practice when there is more than one optometrist practicing at the same location; the lettering of the optometrist's name and the lettering denoting the optometrist's designation as an optometrist shall be of comparable size and readability;

- (4 6) use the title "Optometrist" in connection with a profession or business considered foreign to the practice of optometry;

- (5 7) present his practice or practice location to the public as an optical store in order to entice the public to avail themselves of his professional optometric service while shopping for optical goods. In keeping with this Rule, an optometrist may make use of frame bars or selection cabinets provided such frame bars or selection cabinets are so placed within an office that they are not visible from outside the office the street, office entrance or from any reception area within the office;

- (8) to allow his professional judgment to be unreasonably influenced by someone not directly responsible for the patient's well-being or welfare. Persons directly responsible for the patient's welfare would include another optometrist, a physician, or a member of the patient's family;

- (6 9) give or accept rebates in any form to or from any person in return for an opportunity to generate or receive a professional fee;

- (7) 10 practice or use his license in a manner deemed to be in violation of G.S. 90-121.2 or 90-125;
- (8) 11 knowingly aid another person to violate the laws governing optometry;
- (9) 12 engage in practice involving conduct which is inconsistent with the dignity of the profession or the rules of the Board. Such "unprofessional conduct" includes, but is not limited to, conduct which violates or does not meet any standard of behavior which through professional experience has become established in the profession of optometry in North Carolina.

Statutory Authority G.S. 90-117.5; 90-121.2.

## SUBCHAPTER 42L - ADMINISTRATIVE HEARINGS: CONTESTED CASES

### .0002 REQUEST FOR HEARING

(a) ~~Any time~~ When an individual believes that individual's rights, duties, or privileges have been affected by the Board's administrative action, but he has not received notice of a right to an administrative hearing, that individual may file a formal request for a hearing.

(b) ~~Before an individual files such a request, that individual is encouraged to exhaust all reasonable efforts to resolve the issue informally with the Board.~~ Any person affected by or aggrieved by the Board's action or proposed action must file his request for an administrative hearing in the Board's office so that it is received by the Board within sixty days of the date such person receives notice of the Board's action or proposed action. For purposes of this Rule, "notice" is given by the Board and received by the affected individual:

- (1) for an action taken or proposed to be taken by the entire Board, on the date notice of such action is mailed by the Board to the affected person at his or her last known address according to the records of the Board;
- (2) for an action proposed by a committee of the Board, including a probable cause or investigatory committee, from the date the proposed resolution, proposal for settlement, or other proposed action is mailed to the affected person at his last known address as contained in the Board records. Provided, however, that if within thirty days of receipt of such notice the affected person

proposes in writing to continue informal negotiations to settle the matters at issue, the Board or its committee handling such matter may, in its discretion, agree to toll the running of the sixty-day period or extend the sixty-day period on such terms as the Board deems appropriate;

- (3) for any person affected by a decision of the Board concerning licensure, including an approval or rejection of an application form for licensure, the approval or denial of an application for licensure under G.S. 90-118.5 or 90-118.7, or a decision by the Board that an applicant has passed or failed a clinical practicum examination administered by the Board, from the date notice of such decision is mailed to the affected person at his last known mailing address as contained in the Board records.

(c) ~~Subsequent to such informal action, if still dissatisfied. To request an administrative hearing,~~ the affected individual should submit a request bearing the following notation to the Board's office: REQUEST FOR ADMINISTRATIVE HEARING. The request should contain the following information:

- (1) name and address of the petitioner,
- (2) a concise statement of the action taken by the Board which is challenged,
- (3) a concise statement of the way in which the petitioner has been aggrieved, and
- (4) a clear and specific statement of request for a hearing.

(d) The request will be acknowledged promptly and, if deemed appropriate by the Board in accordance with Rule .0103 of this Section, a hearing will be scheduled.

Statutory Authority G.S. 90-117.5; 150B-11; 150-38.

### .0004 COMMITTEE ON INVESTIGATIONS

(a) Upon receipt of a written complaint alleging misconduct that might subject a licensee or other person to discipline, or upon notice of such otherwise coming to the Board's attention through investigatory means, the Board may investigate such matter to determine whether probable cause exists to institute formal disciplinary proceedings.

(b) The President shall appoint one member from the Board to serve with the Executive Director of the Board as the probable cause or investigatory committee. The probable cause committee

may be assisted by any attorney retained by the Board for the purpose of such investigation, or any investigator retained by the Board.

(c) The probable cause committee shall investigate the complaint referred to it by the Board. The committee shall determine whether or not there is probable cause to believe that the licensee has violated any statute or board rule which would justify a disciplinary hearing. If the committee determines that such probable cause exists, the committee may confer with the licensee in an attempt to settle the matter through informal means. If the committee and the licensee reach an agreement on the disposition of the matter under investigation, the committee may cause to be drafted a proposed settlement agreement, which may include proposed findings of fact, conclusions of law, and a consent order, for presentation to and consideration by the Board. Such findings of fact, conclusions of law, and consent order shall be presented to and approved by the licensee before they are presented to the Board for consideration and approval.

(d) If the probable cause committee and the licensee are not able to settle the matter under investigation by informal means, the licensee may request an administrative hearing pursuant to Rule .0002 of this Section or the Board may give notice of a disciplinary or contested case hearing, if required.

(e) Any Board member who has been appointed to a probable cause committee shall not be assigned to make a decision or to make findings of fact and conclusions of law in any administrative hearing concerning the particular matter on which he served on the probable cause committee. Such Board member may be called as a witness and may give testimony at any administrative hearing resulting from such investigation.

(f) Subsequent to the issuance of a notice of hearing, the attorney prosecuting the contested case for the Board may not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any party or his representative, including the members of the Board assigned to make a decision or to make findings of fact and conclusions of law in the contested case, except on notice and opportunity for all parties to participate. However, the attorney prosecuting the matter for the Board may continue to communicate concerning such contested case with the members of the probable cause committee who investigated such matter, and he may communicate with persons not parties to the contested case who may be called as witnesses, including the person who filed

the complaint against the optometrist. He also may communicate with the Board members about other matters.

*Statutory Authority G.S. 90-117.5; 150B-11; 150B-38; 150B-40.*

#### **.0005 .0006 WRITTEN ANSWERS TO THE NOTICE OF HEARING**

(a) Any party served with a notice of hearing may file a written answer. Such answer must be served on and received by the Board's attorney and must be received at the Board's office no later than 5 working days prior to the date of hearing.

(b) If the written answer is submitted in lieu of a personal appearance by the party at the hearing, the envelope containing the answer must bear the notation: "ANSWER IN LIEU OF APPEARANCE IN THE CASE OF (name of case)" and the official file or reference number of the proceeding. The party shall mail the answer in lieu of appearance by first class mail, postmarked not less than ten full days prior to the date set for the hearing.

(c) If the written answer is submitted as a matter in support of a personal appearance by the party at the hearing, the party shall ensure that the Board and all parties to the proceeding receive copies of the answer ten full days prior to the date of the hearing.

*Statutory Authority G.S. 90-117.5; 150B-38.*

### **SUBCHAPTER 42M - PRECEPTORSHIPS**

#### **.0001 DEFINITIONS**

(a) A preceptorship is a course of study in which students enrolled in a school approved pursuant to Rule 21 NCAC 42B .0101 receive part of their clinical training in a private practice setting outside the direct confines of the educational institution and whose training is continuing under the auspices and overall responsibility of the institution in which he is enrolled and under the supervision of a preceptor credentialed by the institution for which he is acting as a preceptor and whose credentials have been approved by the board.

(b) A preceptor is an optometrist, duly licensed in the State of North Carolina, credentialed by the institution(s) for which he is serving as preceptor and who has been approved by the Board to act as such and under whose supervision a preceptee serves.

(c) A preceptee is an individual who is still enrolled as a student in a school or college of

optometry approved by the Board and whose clinical training is continuing under the auspices and control of the institution in which he is enrolled and under the personal supervision of the preceptor to which he has been assigned by his institution.

(d) An institution is a school or college of optometry approved by the Board in accordance with Rule 21 NCAC 42B .0101.

*Statutory Authority G.S. 90-115.1(3); 90-117.5.*

#### **.0002 FUNCTION**

(a) Preceptees may perform all functions which a duly licensed optometrist may perform under Article 6 of Chapter 90 of the North Carolina General Statutes, provided that such are performed at the direction and under the supervision of the preceptor to whom the preceptee is registered; provided, however, nothing in this part shall be construed to permit a preceptee to prescribe for any patient in his own name or prior to the patient's chart being reviewed and signed by the preceptor. Further, in an instance where a pharmaceutical agent is being prescribed, the preceptor shall physically examine the patient prior to the prescription being authorized and given to the patient.

(b) A preceptee shall wear appropriate identification at all times when involved in patient care that will identify him to patients both by name and as a "student". Acceptable terms that would meet this requirement include but are not limited to "intern", "preceptee", "extern", and "optometry student".

(c) Prior to the undertaking of any examination of a patient by a preceptee, the patient shall be made aware that the care being rendered to him is being performed by a student in training and the patient's record shall note the patient's consent.

*Statutory Authority G.S. 90-115.1(3); 90-117.5.*

#### **.0003 QUALIFICATIONS**

(a) To qualify for a preceptorship, an individual must:

- (1) be a student in good academic standing currently enrolled in an optometric program leading to a doctorate degree in optometry at a school whose preceptorship program has been approved by the Board;
- (2) submit evidence satisfactory to the Board of an educational background sufficient to enable the applicant to

function in a clinical environment;

- (3) be recommended for participation in a preceptorship by the dean of the optometry school or college or his designee;
- (4) be approved and registered by the Board.

(b) Within 60 days of the completion of a preceptorship, the institution under whose auspices the preceptorship was offered shall furnish the Board with an evaluation of the preceptee's performance in the preceptorship, such evaluation to include copies of no fewer than one case report for each week the preceptee was engaged in the program.

*Statutory Authority G.S. 90-115.1(3); 90-117.5.*

#### **.0004 APPLICATION AND REGISTRATION**

(a) An institution establishing a preceptorship within the State of North Carolina shall be approved by the Board in accordance with Rule 21 NCAC 42B .0101 and shall:

- (1) notify the Board in writing outlining in sufficient detail the educational purposes of the program, the clinical experience they expect the preceptee to gain, the supervision and/or protocols that the institution, the preceptor and the preceptee agree to in order to assure safe and effective patient care, the standards by which they will credential preceptors, the facilities that are required and made available by the preceptor to the preceptee, the maximum and minimum number of weeks a student will be assigned to the same preceptor and the means and/or methods they use to evaluate the student's performance in the program. If the Board finds that the preceptorship serves the educational goals as outlined by the institution and patient care and safety will not be compromised by lack of proper supervision, the Board will notify the institution of the approval by the Board of their preceptorship program.
- (2) within 30 days of the beginning of each academic year furnish the Board with a current list of optometrists licensed in North Carolina who are recommended by the institution to the Board as having proper credentials and adequate facilities to serve as preceptors. If "new" preceptors are to be added to the



institution's preceptorship program after the institution has filed the preceptor list with the Board, the Board shall be notified prior to a preceptee being assigned to a new preceptor.

(b) To receive Board approval and be registered as a preceptee, the individual must file an application, Form BEO-7, provided by the Board and must submit such to the Board complete in every detail. The application must be accompanied by evidence of educational qualifications as required by the Board.

(c) To receive Board approval and be registered as a preceptor, the optometrist must file an application, Form BEO-8, provided by the Board and must submit such to the Board complete in every detail.

Statutory Authority G.S. 90-115.1(3); 90-117.5.

#### .0005 REMUNERATION AND EXPENSES

The preceptor shall serve as such without remuneration for his services. Any funds given to the preceptee shall be only for reimbursement of expenses and subsistence costs. All such funds shall be reported by the preceptor on Form BEO-9 to the Board no later than 30 days after the termination of the preceptorship.

Statutory Authority G.S. 90-115.1(3); 90-117.5.

#### .0006 TERMINATION

(a) Approval and registration of a preceptor shall continue in effect until terminated by the Board, by the institution from whom he received his credentials as a preceptor or until 30 days after written notification of termination is submitted by the preceptor to the Board. The approval and registration of a preceptor may be terminated, after due notice and hearing, for good cause shown or for any violation of these Rules.

(b) The approval of a preceptee shall be terminated by the Board no later than 30 days following the date of graduation or when, after due notice and hearing, the Board shall find:

- (1) that the preceptee has held himself out or permitted another to represent him as a licensed optometrist;
- (2) that the preceptee has in fact performed otherwise than at the direction or under the personal supervision of an optometrist licensed by the Board or has been delegated and performed a task or tasks beyond his competence;
- (3) that the preceptee is a habitual user of

intoxicants or drugs to such an extent that he is unable to perform as a preceptee to an optometrist;

(4) that the preceptee has been convicted in any court, state or federal, of any felony or other criminal offenses involving moral turpitude;

(5) that the preceptee has been adjudicated a mental incompetent or whose mental condition renders him unable to safely perform as a preceptee to an optometrist; or

(6) the preceptee otherwise commits any act or omission which would subject him to discipline under G.S. 90-121.2 or under these Rules.

(c) Approval of a preceptorship shall continue in effect until terminated by Board or until 30 days after written notification of termination is submitted by the institution to the Board. The approval a preceptorship may be terminated, after due notice and hearing, for good cause shown or for any violation of these Rules.

Statutory Authority G. S. 90-115.1(3); 90-117.5; 90-121.2.



**The List of Rules Codified** is a listing of rules that were filed with OAH in the month indicated.

**Key:**

*Citation* = Title, Chapter, Subchapter and Rule(s)  
*AD* = Adopt  
*AM* = Amend  
*RP* = Repeal  
*With Chgs* = Final text differs from proposed text  
*Eff. Date* = Date rule becomes effective  
*Temp. Expires* = Rule was filed as a temporary rule and expires on this date or 180 days

**NORTH CAROLINA ADMINISTRATIVE CODE**

**OCTOBER, NOVEMBER 1992**

<b>TITLE</b>	<b>DEPARTMENT</b>	<b>TITLE</b>	<b>DEPARTMENT</b>
1	Administration	16	Education
2	Agriculture	17	Revenue
4	Economic and Community Development	19A	Transportation
7	Cultural Resources	21	Occupational Licensing Boards
10	Human Resources	2 -	Architecture
11	Insurance	17 -	Dietetics/Nutrition
12	Justice	19 -	Electrolysis
13	Labor	56 -	Professional Engineers and Land Surveyors
15A	Environment, Health, and Natural Resources	23	Community Colleges
		24	Independent Agencies
		1 -	Housing Finance

	<b>Citation</b>	<b>AD</b>	<b>AM</b>	<b>RP</b>	<b>With Chgs</b>	<b>Eff. Date</b>	<b>Temp. Expires</b>
1	NCAC 38 .0205	✓			✓	11/02/92	
2	NCAC 34 .0406	✓			✓	11/02/92	
	.0603		✓		✓	11/02/92	
	.0902			✓		11/02/92	
	48F .0301		✓		✓	12/01/92	
	.0302		✓			12/01/92	
4	NCAC 1K .0101	✓			✓	12/01/92	
	.0102	✓				12/01/92	
	.0104 - 0105	✓			✓	12/01/92	
4	NCAC 1K .0201	✓			✓	12/01/92	

**LIST OF RULES CODIFIED**

Citation	AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
.0202	✓				12/01/92	
.0203	✓			✓	12/01/92	
.0301	✓			✓	12/01/92	
.0401 - .0402	✓			✓	12/01/92	
.0403	✓				12/01/92	
.0404	✓			✓	12/01/92	
.0405	✓				12/01/92	
3E .0101		✓		✓	01/01/93	
.0106			✓		01/01/93	
.0201		✓		✓	01/01/93	
.0204	✓				01/01/93	
.0302		✓		✓	01/01/93	
.0601		✓		✓	01/01/93	
.0603			✓		01/01/93	
19L .1401 - .1405			✓		11/02/92	
19S .0101	✓				11/30/92	
.0102 - .0103	✓			✓	11/30/92	
.0104 - .0105	✓			✓	11/02/92	
.0106	✓				11/02/92	
.0201	✓				11/02/92	
.0202	✓			✓	11/30/92	
.0301	✓				11/02/92	
.0401	✓			✓	11/30/92	
.0402 - .0404	✓			✓	11/02/92	
.0501 - .0502	✓				11/02/92	
.0503	✓			✓	11/02/92	
.0601 - .0603	✓			✓	11/02/92	
.0701 - .0704	✓			✓	11/02/92	
.1001	✓			✓	11/02/92	
.1002	✓				11/02/92	
.1003	✓			✓	11/02/92	
.1004 - .1007	✓				11/02/92	
4 NCAC 19S .1008 - .1009	✓			✓	11/02/92	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
.1101 - .1104				✓			✓	11/02/92	
.1105 - .1107				✓				11/02/92	
.1108 - .1110				✓			✓	11/02/92	
7	NCAC	5	.0203		✓			01/01/93	
10	NCAC	3R	.3001	✓			✓	11/02/92	
.3010				✓				11/02/92	
.3020				✓			✓	11/02/92	
.3030				✓			✓	11/02/92	
.3040				✓			✓	11/02/92	
14C		.1115			✓		✓	11/02/92	
14K		.0216			✓		✓	11/02/92	
14T		.0101		✓			✓	11/02/92	
.0102				✓				11/02/92	
.0103 - .0104				✓			✓	11/02/92	
15A		.0205			✓			11/02/92	
.0206					✓		✓	11/02/92	
.0210 - .0215					✓			11/02/92	
.0216					✓		✓	11/02/92	
.0217					✓			11/02/92	
.0218					✓		✓	11/02/92	
.0220					✓			11/02/92	
.0223					✓			11/02/92	
recodified to	.0224 .0226							11/03/92	
recodified to	.0225 .0224							11/03/92	
.0225					✓		✓	11/02/92	
recodified to	.0226 .0225							11/03/92	
.0226					✓		✓	11/02/92	
.0228					✓			11/02/92	
18A		.0125 - .0126			✓		✓	01/04/93	
.0127 - .0128					✓			01/04/93	
10	NCAC	18A	.0130		✓			01/04/93	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
.0132 - .0133					✓			01/04/93	
.0135					✓			01/04/93	
18D	.0117				✓		✓	11/02/92	
.0119					✓		✓	11/02/92	
.0127				✓				11/02/92	
26B	.0109				✓			11/02/92	
26D	.0016				✓		✓	02/01/93	
26H	.0102				✓			01/01/93	
.0204					✓			12/01/92	
.0206					✓			12/01/92	
.0303					✓			01/01/93	
35D	.0201				✓		✓	11/02/92	
35E	.0309				✓		✓	12/01/92	
41E	.0514				✓			10/14/92	180 DAYS
41G	.0602				✓			10/14/92	180 DAYS
.1102					✓			10/14/92	180 DAYS
41R	.0003				✓			10/14/92	180 DAYS
42C	.2401				✓			10/14/92	180 DAYS
.3402					✓			12/01/92	
.3601				✓			✓	12/01/92	
42T	.0001				✓		✓	12/01/92	
.0003					✓			12/01/92	
.0006				✓				12/01/92	
46C	.0105					✓		12/01/92	
.0107					✓			12/01/92	
46H	.0110			✓			✓	12/01/92	
.0304					✓			12/01/92	
47B	.0305				✓		✓	11/02/92	
11	NCAC	3	.0002			✓		12/01/92	
.0005 - .0008						✓		12/01/92	
11A .0601				✓				12/01/92	
.0603 - .0608				✓				12/01/92	
11	NCAC	11A	.0609	✓			✓	12/01/92	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
12			.1002		✓			12/01/92	
			.1004		✓			12/01/92	
			.1006		✓			12/01/92	
			.1008		✓			12/01/92	
			.1009 - .1010		✓		✓	12/01/92	
			.1017	✓				12/01/92	
			.1018 - .1019	✓			✓	12/01/92	
			.1020 - .1021	✓				12/01/92	
12	NCAC	4G	.0201		✓			12/01/92	
8			.0103 - .0105		✓			11/02/92	
			.0109	✓				11/02/92	
			.0204	✓				11/02/92	
			.0506	✓			✓	11/30/92	
10B			.0103		✓		✓	01/01/93	
			.0106		✓			01/01/93	
			.0203		✓			01/01/93	
			.0204		✓		✓	01/01/93	
			.0205		✓			01/01/93	
			.0206		✓		✓	01/01/93	
			.0301		✓			01/01/93	
			.0303		✓			01/01/93	
			.0304 - .0305		✓		✓	01/01/93	
			.0307		✓			01/01/93	
			.0401		✓			01/01/93	
			.0404		✓			01/01/93	
			.0406		✓		✓	01/01/93	
			.0408 - .0409		✓		✓	01/01/93	
			.0505		✓		✓	01/01/93	
			.0507		✓		✓	01/01/93	
			.0603		✓		✓	01/01/93	
			.0605		✓			01/01/93	
			.0911 - .0912	✓			✓	01/01/93	
12	NCAC	4G	.2101		✓		✓	01/01/93	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
.2102 - .2104					✓			01/01/93	
.2105					✓		✓	01/01/93	
11	.0203				✓			10/06/92	180 DAYS
.0302					✓			10/06/92	180 DAYS
13	NCAC	7C	.0101 - .0102		✓			02/08/93	
.0108				✓			✓	10/22/92	
.0109				✓				10/22/92	
15A	NCAC	1C	.0504		✓			12/07/92	180 DAYS
1K		.0101 - .0102		✓				12/01/92	
.0103				✓			✓	12/01/92	
.0201 - .0202				✓				12/01/92	
.0301 - .0305				✓			✓	12/01/92	
.0401				✓			✓	12/01/92	
.0402 - .0404				✓				12/01/92	
2B		.0216			✓		✓	12/01/92	
.0309					✓		✓	12/01/92	
.0312					✓		✓	12/01/92	
2C		.0101			✓			12/01/92	
.0102 - .0103					✓		✓	12/01/92	
.0105					✓		✓	12/01/92	
.0107 - .0111					✓		✓	12/01/92	
.0112 - .0114					✓			12/01/92	
.0116					✓			12/01/92	
.0118 - .0119					✓			12/01/92	
2D		.0103			✓		✓	12/01/92	
.0104					✓			12/01/92	
.0401					✓			12/01/92	
.0521					✓			12/01/92	
.0524					✓		✓	12/01/92	
.0525					✓			12/01/92	
.0530 - .0531					✓			12/01/92	
.0532					✓		✓	12/01/92	
15A	NCAC	2D	.0926		✓		✓	05/01/93	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
			.0927		✓		✓	12/01/92	
2H			.0603		✓		✓	12/01/92	
			.0607		✓		✓	12/01/92	
			.0609 - .0610		✓		✓	12/01/92	
			.0801 - .0804		✓		✓	11/02/92	
			.0806 - .0807		✓		✓	11/02/92	
			.0808		✓			11/02/92	
			.0809 - .0810		✓		✓	11/02/92	
2L			.0107		✓		✓	11/02/92	
2M			.0201		✓			11/02/92	
7H			.0208		✓		✓	11/30/92	
			.0305		✓		✓	12/01/92	
			.0310		✓			12/01/92	
7J			.0604	✓				11/30/92	
10A			.1001		✓		✓	11/02/92	
10F			.0323		✓		✓	12/01/92	
16A			.0401			✓		12/01/92	180 DAYS
			.1101 - .1108	✓				12/01/92	180 DAYS
			.1150 - .1151	✓				12/01/92	180 DAYS
			.1201 - .1209	✓				12/01/92	180 DAYS
16	NCAC	6C	.0201 - .0202		✓		✓	12/01/92	
			.0205 - .0206		✓			12/01/92	
17	NCAC	5B	.1112		✓			11/02/92	
		5C	.0102		✓			11/02/92	
			.0407	✓				11/02/92	
			.0604		✓			11/02/92	
			.2003		✓			11/02/92	
19A	NCAC	2B	.0164 - .0165		✓		✓	11/02/92	
		2D	.0822		✓			12/01/92	
			.0824		✓			12/01/92	
		2E	.0219		✓			12/01/92	
			.0221		✓			12/01/92	
21	NCAC	2	.0108		✓		✓	12/01/92	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
.0301 - .0302					✓			12/01/92	
17		.0016		✓			✓	11/30/92	
19		.0102		✓				12/01/92	
56		.0501 - .0503			✓		✓	11/02/92	
		.0601			✓			11/02/92	
		.0603			✓		✓	11/02/92	
		.0701			✓		✓	11/02/92	
		.1603 - .1604			✓		✓	11/02/92	
		.1605 - .1607		✓			✓	11/02/92	
23	NCAC	2D	.0325 - .0326		✓			10/15/92	180 DAYS
		2E	.0402		✓			10/15/92	180 DAYS
			.0602		✓			10/15/92	180 DAYS
24	NCAC	1M	.0101		✓			11/02/92	
			.0201		✓			11/02/92	
			.0203		✓			11/02/92	
			.0304 - .0305	✓				11/02/92	
			.0406	✓				11/02/92	
	1O		.0101 - .0102	✓			✓	11/30/92	
			.0201 - .0203	✓			✓	11/30/92	



*The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).*

## **COMMERCE**

### **Departmental Rules**

<i>4 NCAC 1K .0103 - Eligible Applicants</i>	<i>RRC Objection</i>	<i>11/19/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/17/92</i>
<i>4 NCAC 1K .0204 - Discretionary Public Hearing by the Department</i>	<i>RRC Objection</i>	<i>11/19/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/17/92</i>
<i>4 NCAC 1K .0205 - Formal Application Procedures: Approval</i>	<i>RRC Objection</i>	<i>11/19/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/17/92</i>
<i>4 NCAC 1K .0206 - Formal Application Procedures: Denial</i>	<i>RRC Objection</i>	<i>11/19/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/17/92</i>
<i>4 NCAC 1K .0207 - Reimbursement of Extraordinary Expense</i>	<i>RRC Objection</i>	<i>11/19/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/17/92</i>
<i>4 NCAC 1K .0302 - Criteria for Making Necessary Findings</i>	<i>RRC Objection</i>	<i>11/19/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/17/92</i>

## **ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

### **Coastal Management**

<i>15A NCAC 7H .0308 - Specific Use Standards for Ocean Hazard Areas</i>	<i>RRC Objection</i>	<i>11/19/92</i>
<i>Rule Returned to Agency</i>		<i>12/17/92</i>

### **Environmental Management**

<i>15A NCAC 2H .0805 - Certification and Renewal of Certification</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>Rule Returned to Agency</i>		<i>11/19/92</i>
<i>Agency Filed with OAH</i>	<i>Eff.</i>	<i>12/21/92</i>

### **Governor's Waste Management Board**

<i>15A NCAC 14C .0005 - Conditions for Grants</i>	<i>RRC Objection</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/17/92</i>

### **Solid Waste Management**

<i>15A NCAC 13B .0103 - General Conditions</i>	<i>RRC Objection</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/17/92</i>

### **Wildlife Resources and Water Safety**

<i>15A NCAC 10I .0001 - Definitions</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>11/19/92</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>12/17/92</i>

## **HUMAN RESOURCES**

**Medical Assistance**

10 NCAC 26D .0012 - Time Limitation	RRC Objection	12/17/92
Agency Withdrew Rule		12/17/92
10 NCAC 26N .0201 - Offer to Counsel	RRC Objection	12/17/92
Agency Withdrew Rule		12/17/92

**Mental Health: General**

10 NCAC 14K .0103 - Definitions	RRC Objection	12/17/92
Agency Revised Rule	Obj. Removed	12/17/92

**INDEPENDENT AGENCIES**

**N.C. Housing Finance Agency**

24 NCAC 1M .0202 - Eligibility	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0204 - Selection Procedures	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0205 - Administration	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0206 - Program Fees	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0301 - Goal and Objectives	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0302 - Eligibility Requirements	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0303 - Threshold Review Criteria	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0306 - Funding Commitment	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0401 - Goals and Objectives	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0402 - Eligibility Requirements	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0403 - Threshold Review Criteria	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0404 - Ranking Criteria	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0405 - Agency Board Approval	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92

**INSURANCE****Agent Services Division**

<i>11 NCAC 6A .0802 - Licensee Requirements</i>	<i>RRC Objection</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/17/92</i>

**Departmental Rules**

<i>11 NCAC 1 .0432 - Manufactured Housing Board Hearings</i>	<i>RRC Objection</i>	<i>12/17/92</i>
<i>Agency Withdrew Rule</i>		<i>12/17/92</i>

**Financial Evaluation Division**

<i>11 NCAC 11A .0602 - Licensure</i>	<i>RRC Objection</i>	<i>11/19/92</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>11/19/92</i>
<i>Rule Returned to Agency</i>		<i>12/17/92</i>

**Multiple Employer Welfare Arrangements**

<i>11 NCAC 18 .0019 - Description of Forms</i>	<i>RRC Objection</i>	<i>06/18/92</i>
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**Seniors' Health Insurance Information Program**

<i>11 NCAC 17 .0005 - SHIP Inquiries to Insurers and Agents</i>	<i>RRC Objection</i>	<i>06/18/92</i>
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**LICENSING BOARDS AND COMMISSIONS****Architecture****Cosmetic Art Examiners**

<i>21 NCAC 14L .0301 - Applicants Licensed as Teachers in Other States</i>	<i>RRC Objection</i>	<i>11/19/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/17/92</i>
<i>21 NCAC 14L .0302 - Requirements for Obtaining a Teacher's License</i>	<i>RRC Objection</i>	<i>11/19/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/17/92</i>

**General Contractors**

<i>21 NCAC 12 .0901 - Definitions</i>	<i>RRC Objection</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/17/92</i>
<i>21 NCAC 12 .0908 - Order Directing Payment from Fund</i>	<i>RRC Objection</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/17/92</i>
<i>21 NCAC 12 .0910 - Limitations; Pro Rata Distribution</i>	<i>RRC Objection</i>	<i>12/17/92</i>

**REVENUE****Individual Income, Inheritance and Gift Tax Division**

<i>17 NCAC 3B .0401 - Penalties</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>17 NCAC 3B .0402 - Interest</i>	<i>RRC Objection</i>	<i>08/20/92</i>

**Individual Income Tax Division**

<i>17 NCAC 6B .0107 - Extensions</i>	<i>RRC Objection</i>	<i>08/20/92</i>
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## *RRC OBJECTIONS*

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*17 NCAC 6B .0115 - Additions to Federal Taxable Income*

*RRC Objection 08/20/92*

*17 NCAC 6B .0116 - Deductions from Federal Taxable Income*

*RRC Objection 08/20/92*

*17 NCAC 6B .0117 - Transitional Adjustments*

*RRC Objection 08/20/92*

*17 NCAC 6B .3406 - Refunds*

*RRC Objection 08/20/92*

***This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.***

**1 NCAC 5A .0010 - ADMINISTRATIVE PROCEDURES**

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared two portions of Rule 1 NCAC 5A .0010 void as applied in *Stauffer Information Systems, Petitioner v. The North Carolina Department of Community Colleges and The North Carolina Department of Administration, Respondent and The University of Southern California, Intervenor-Respondent* (92 DOA 0666).

**15A NCAC 19A .0202(d)(10) - CONTROL MEASURES - HIV**

Brenda B. Becton, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 19A .0202(d)(10) void as applied in *ACT-UP TRIANGLE (AIDS Coalition to Unleash Power Triangle), Steven Harris, and John Doe, Petitioners v. Commission for Health Services of the State of North Carolina, Ron Levine, as Assistant Secretary of Health and State Health Director for the Department of Environment, Health, and Natural Resources of the State of North Carolina, William Cobey, as Secretary of the Department of Environment, Health, and Natural Resources of the State of North Carolina, Dr. Rebecca Meriwether, as Chief, Communicable Disease Control Section of the North Carolina Department of Environment, Health, and Natural Resources, Wayne Bobbitt Jr., as Chief of the HIV/STD Control Branch of the North Carolina Department of Environment, Health, and Natural Resources, Respondents* (91 EHR 0818).

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.*

### KEY TO CASE CODES

ABC	Alcoholic Beverage Control Commission	DST	Department of State Treasurer
BDA	Board of Dental Examiners	EDC	Department of Public Instruction
BME	Board of Medical Examiners	EHR	Department of Environment, Health, and Natural Resources
BMS	Board of Mortuary Science	ESC	Employment Security Commission
BOG	Board of Geologists	HAF	Hearing Aid Dealers and Fitters Board
BON	Board of Nursing	HRC	Human Relations Committee
BOO	Board of Opticians	IND	Independent Agencies
CFA	Commission for Auctioneers	INS	Department of Insurance
COM	Department of Economic and Community Development	LBC	Licensing Board for Contractors
CPS	Department of Crime Control and Public Safety	MLK	Milk Commission
CSE	Child Support Enforcement	NHA	Board of Nursing Home Administrators
DAG	Department of Agriculture	OAH	Office of Administrative Hearings
DCC	Department of Community Colleges	OSP	Office of State Personnel
DCR	Department of Cultural Resources	PHC	Board of Plumbing and Heating Contractors
DCS	Distribution Child Support	POD	Board of Podiatry Examiners
DHR	Department of Human Resources	SOS	Department of Secretary of State
DOA	Department of Administration	SPA	Board of Examiners of Speech and Language Pathologists and Audiologists
DOJ	Department of Justice	WRC	Wildlife Resources Commission
DOL	Department of Labor		
DSA	Department of State Auditor		

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Midway Grading Company, Inc. v. EHR, Division of Land Resources	90 EHR 0742	Morrison	12/23/92
Eula C. Holloway v. NC A & T St University, Technology Education Dept	90 OSP 1377	Becton	12/21/92
Mary Carraway Johnson v. Department of State Treasurer, Retirement Systems Div	91 DST 1450	Chess	12/23/92
Thomas Leon Atkinson v. Criminal Justice Ed & Training Standards Commission	92 DOJ 0279	Nesnow	12/14/92

**CONTESTED CASE DECISIONS**

<b>CASE NAME</b>	<b>CASE NUMBER</b>	<b>ALJ</b>	<b>FILED DATE</b>
Alcoholic Beverage Control Commission v. A & W One Stop, Inc., T/A One Stop	92 ABC 0836	Becton	12/21/92
Alcoholic Beverage Control Commission v. Partnership, T/A Hawks Landing	92 ABC 0839	Becton	12/21/92
C. V. Tatem v. Division of Marine Fisheries	92 EHR 0923	Reilly	12/29/92
Lionel J. Randolph v. Department of Human Resources	92 OSP 0985	Gray	12/28/92
Laura Harvey Williams v. DHR, Division of Facility Services	92 DHR 1191	Nesnow	12/31/92
Lesa Gasque, on behalf of Michael Norman, Guilford County Department of Social Services, on behalf of Michael Norman, and Nexus Willie M. Program, on behalf of Michael Norman v. Guilford County Board of Education	92 EDC 1227	Manni	12/31/92
Daoud Mohammad Abu-Ghannan v. EHR, Division of Maternal & Child Health, Nutrition Services Section	92 EHR 1351	Morgan	12/28/92
Myra Aliese Johnson & Alvin Eugene Johnson v. Mecklenburg County Department of Social Services	92 DHR 1435	Reilly	12/22/92

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
90 OSP 1377

V.

## RECOMMENDED DECISION

**NORTH CAROLINA A & T STATE UNIVERSITY,  
TECHNOLOGY EDUCATION DEPARTMENT,  
Respondent.**

## APPEARANCES

**Petitioner:** Christopher G. Harper, Attorney, Durham,  
North Carolina.

**Respondent:** Thomas J. Ziko, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina.

## ISSUES

1. Did the Respondent have just cause to discharge the Petitioner from her position as Secretary III?
2. Did the Respondent discriminate against the Petitioner on the basis of her race or sex when it discharged her from her position as a Secretary III?
3. Is the Petitioner a qualified handicapped person, as a result of her on the job injury, for the purpose of performing the duties of a Secretary III in the Respondent's Technology Education Department?
4. Did the Respondent discriminate against the Petitioner on the basis of her handicap when it discharged her from her position as a Secretary III?

**MOTION TO DISMISS**

At the conclusion of the Petitioner's presentation of evidence, the Respondent's motion to dismiss the Petitioner's allegations of sexual and racial discrimination was granted by the undersigned in open court.

## FINDINGS OF FACT

From official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, it is found as a fact that:

1. The Petitioner was employed as a Secretary III by the Respondent. The Petitioner's immediate supervisor was Dr. Robert Pyle. The Petitioner began working for Dr. Pyle in May, 1989.



2. The Petitioner had 13 years of prior employment with the Respondent.
3. The Petitioner sustained an on the job injury in April, 1990 when a large bookcase fell on her while she was retrieving supplies from a cabinet. As a result of the injuries she sustained, the Petitioner was unable to return to work for a period of five months.
4. Her work history prior to her injury was impeccable, and her performance evaluations were excellent.
5. The Petitioner performed tasks beyond the scope of her job description and was highly praised by Dr. Pyle prior to her on the job injury on April 16, 1990.
6. The Petitioner received a 10% disability rating to her left arm, and a 25% permanent disability rating to her back as a result of her accident. The Petitioner's disabilities left her unable to lift packages in excess of 10 pounds, and the Petitioner was restricted from sitting or standing for extended periods of time.
7. During her period of recuperation, the Petitioner received several calls from her supervisor, Dr. Robert Pyle inquiring about when she would be able to return to work. During this same time period, the Petitioner received a letter dated May 30, 1990 from the Respondent directing her not to return to work until she achieved a 100% recovery.
8. The Respondent's actions led the Petitioner to believe that her job was in jeopardy. Therefore, the Petitioner contacted the Greensboro Human Relations Commission on June 22, 1990 and expressed her concerns to Ms. Yolanda LeaCraft. Ms. LeaCraft documented their discussions and suggested that the Petitioner contact either the State Personnel Office or the Personnel Office at N.C. A & T State University for advice.
9. The Petitioner returned to work on September 10, 1990. At that time, the duties of the Petitioner's Secretary III position were being performed by a temporary employee, Patricia Posey. The Petitioner was assigned to the Chancellor's office until Ms. Posey vacated the Secretary III position in the Technology Education Department.
10. The Petitioner worked in the Chancellor's office for one week before being transferred back to the Secretary III position in the School of Technology during the week of September 17, 1990.
11. When the Petitioner returned to work in the School of Technology Education, she was informed of some changes which had been implemented during her absence and was given new instructions regarding her job duties by Dr. Pyle.
12. Dr. Pyle met with the Petitioner on September 17, 1990 and informed her that the current office hours were from 8:00 a.m. to 5:00 p.m. Dr. Pyle discussed the need to turn in time sheets in a timely manner and other aspects of her job. Dr. Pyle's notes indicate that he informed the Petitioner that a "weeks notice" was required for annual leave. This notation does not, however, appear to the undersigned to have been made at the same time the other notes were made.
13. On September 20, 1990, the Petitioner became ill while at work. Because Dr. Pyle was out of the office, she left him a note informing him that she had become ill and was going home and that she would be in the next day if she felt better.
14. The Petitioner missed a half of day of work on September 20, 1990 and she did not work at all on September 21, 1990.
15. The Petitioner did not call in sick on September 21, 1990.
16. On October 1, 1990, the Petitioner presented Dr. Pyle a written request for two hours of annual leave

from 9:45 a.m. to 11:45 a.m. There is no evidence that Dr. Pyle denied the Petitioner's request on the basis that she had failed to make the request one week in advance.

17. On October 2, 1990, Dr. Pyle met with the Petitioner to discuss areas of concern and issued the Petitioner an oral warning. The areas of concern discussed were: 1) Playing of radio, 2) Personal reading materials left on the Petitioner's desk, 3) Office management skills, 4) Petitioner's abruptness when reassigned work, and 5) Typing errors and proofreading work.
18. The Petitioner became upset during the October 2, 1990 conference with Dr. Pyle and accused him of picking on her.
19. The Petitioner began to feel uneasy about her job and contacted the Dean of the School of Technology Education, Dr. Earl G. Yarborough, to request a meeting to discuss her status.
20. Dr. Pyle also contacted Dr. Yarborough about the problems he and the Petitioner were having.
21. On October 10, 1990, Dr. Yarborough met with the Petitioner and Dr. Pyle. They discussed many of the areas of concern that Dr. Pyle and the Petitioner had covered on October 2, 1990, including the Petitioner's "taking time off from work without notifying supervisor."
22. On October 17, 1990, the Petitioner called in to work to inform Dr. Pyle that she was having problem with her arm and her doctor had advised that she stay out of work for a few days.
23. On October 31, 1990, the Petitioner requested annual leave for the next day, November 1, 1990. The Petitioner typed her request and placed it in Dr. Pyle's incoming mail box since he was out of the office. Dr. Pyle received the Petitioner's annual leave request on October 31, 1990 at approximately 5:15 p.m. When the Petitioner reported for work on November 2, 1990, she learned that her request for leave on November 1, 1990 had not been approved.
24. In the note denying her request for annual leave, Dr. Pyle informed the Petitioner that she must request annual leave at least three days before the date for which leave is being requested.
25. The Petitioner followed the procedure for requesting leave that she had become accustomed to following prior to her on the job injury and the procedure that she thought was routine university practice for requesting leave time.
26. The Petitioner was informed by way of the State Employees Handbook, 1990, page 16, that requests for leave must be approved by her supervisor.
27. The Petitioner did not receive prior approval for the annual leave day she took on November 1, 1990.
28. Ms. Patricia Posey, the secretary hired during the Petitioner's absence, was present on November 1, 1990 and able to handle the Department of Education Technology's office operations.
29. On Monday, November 5, 1990 at approximately 2:30 p.m., Dr. Pyle notified the Petitioner that she was to meet with him for a Pre-Dismissal Conference at 3:00 p.m. and she would be dismissed at the end of the day unless she provided him some reason not to proceed with her termination.
30. The Petitioner responded to the notice of the Pre-Dismissal conference by writing Dr. Pyle a memorandum in which she stated that under the circumstances, she did not wish to meet with him and that she would consider herself already dismissed.
31. Dr. Pyle wrote the Petitioner a letter dated November 5, 1990 notifying her that "On the basis of your behavior on October 31, 1990, failure to receive approval from your supervisor prior to taking annual leave, I am hereby notifying you that your services are not (sic) longer needed in the Department of

Technology Education."

32. The letter terminating the Petitioner's employment did not inform her of her appeal rights.

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

**CONCLUSIONS OF LAW**

1. North Carolina General Statutes section 126-35 provides that no permanent employee subject to the State Personnel Act shall be discharged, suspended or reduced in pay or position, except for just cause.
2. The determination of whether just cause exists involves both substantive and procedural questions. Causes for dismissal fall into two categories: (1) discipline imposed on the basis of job performance which requires progressive warnings, and (2) discipline imposed on the basis of personal conduct detrimental to state service which requires no prior warnings.
3. Before an employee can be discharged, suspended or reduced in pay or position, the employee must be furnished with a statement in writing setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights.
4. The Petitioner was a permanent employee of the Respondent subject to the State Personnel Act.
5. According to the State Personnel Manual, the job performance category covers performance related inadequacies for which a reasonable person would expect to be notified of and allowed an opportunity to improve, and the personal conduct category covers those actions for which no reasonable person could, or should, expect to receive prior warnings.
6. Insubordination is the refusal to accept or to obey a reasonable and proper assignment from an authorized supervisor. As such, insubordinate conduct falls within the discipline for personal conduct category which does not require any prior warning. The term insubordination implies the existence of a willful or intentional disregard of the reasonable instructions of the employer.
7. There is evidence that the Petitioner was instructed that she was not to take time off without "notifying" her supervisor. Notify means to give notice to or to inform.
8. The Petitioner notified her supervisor of her intention to take annual leave on November 1, 1990. Thus, she complied with the instructions she had been given and the office procedure in place up until that time.
9. Other than the statement that leave must be approved by a supervisor that is found in the State Employees' Handbook, there is no evidence that the Petitioner was instructed prior to November 2, 1990 that she had to have her leave requests approved three days in advance. The notation about leave in Dr. Pyle's notes of the September 17, 1990 meeting conflicts with the directive given to the Petitioner on November 2, 1990 and was, in the opinion of the undersigned added to his notes sometime after September 17, 1990. This conclusion is buttressed by the fact that Dr. Pyle apparently approved the Petitioner's request for annual leave on October 1, 1990 and did not, at that time, comment on the fact that the Petitioner had not presented her request one week in advance.
10. There is no evidence that the Petitioner willfully or intentionally disregarded instructions given to her by her supervisor. Therefore, her behavior cannot be classified as insubordination, the type of conduct for which one should not expect to receive a warning.
11. The rules promulgated by the State Personnel Commission and codified at 25 NCAC 1E .202 require that annual "leave shall be taken only upon authorization of the agency head."

12. The Petitioner's request for leave on November 1, 1990 was not approved by her supervisor. Therefore, she violated the provisions of 25 NCAC 1E .0202. If the Respondent's practice has been and is to strictly enforce the provisions of 25 NCAC 1E .0202 by requiring prior approval, the Petitioner should have received a warning that her conduct was unacceptable and she should have been afforded an opportunity to comply with the standard of conduct required by her employer.
13. The Petitioner's situation was not one where she was denied requested leave and she then knowingly and willfully failed to report to work knowing that her request for leave had been denied.
14. Since the Petitioner's conduct was not insubordination, the Respondent did not have just cause to dismiss the Petitioner from her employment. Her conduct was, at most a performance inadequacy which required that she receive the requisite number of warnings prior to dismissal.
15. The Respondent failed to inform the Petitioner of her appeal rights as required by North Carolina General Statutes section 126-35. Pursuant to the regulations codified at 25 NCAC 1B .0432, failure to give written notice of applicable appeal rights in connection with a dismissal is a procedural defect the sole remedy for which is an extension of the time in which to file an appeal. The Petitioner's Petition for A Contested Case Hearing was timely filed and no other remedy is available for this violation.
16. Since the undersigned has found that the Petitioner did not receive the requisite number of warnings to merit dismissal for performance based inadequacies, it is not necessary to reach the Petitioner's allegations that her dismissal constituted discrimination on the basis of a handicapping condition.

**RECOMMENDED DECISION**

The State Personnel Commission will make the Final Decision in this contested case. It is recommended that the Commission adopt the Findings of Fact and Conclusions of Law set forth above and reinstate the Petitioner in a comparable grade position. In addition the Petitioner should be awarded backwages and reasonable attorney fees.

**ORDER**

It is hereby ordered that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statutes section 150B-36(b).

**NOTICE**

Before the State Personnel Commission makes the FINAL DECISION, it is required by North Carolina General Statutes section 150B-36(a) to give each party an opportunity to file exceptions to this RECOMMENDED DECISION, and to present written arguments to those in the agency who will make the final decision.

The agency is required by North Carolina General Statutes section 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the Parties' attorney of record.

This the 21st day of December, 1992.

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Brenda B. Becton  
Administrative Law Judge

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
91 DST 1450

MARY CARRAWAY JOHNSON,  
Petitioner,

v.

N.C. DEPARTMENT OF STATE TREASURER,  
RETIREMENT SYSTEMS DIVISION,  
Respondent.

**RECOMMENDED DECISION**

This matter came on for hearing on August 17, 1992, in High Point, North Carolina before Administrative Law Judge Sammie Chess, Jr. The record closed on November 6, 1992, when the Petitioner completed findings of facts.

**ISSUES**

1. Has the Respondent properly calculated the amount of Petitioner's benefits under the retirement plan she elected, or, has Respondent provided Petitioner with the actuarial equivalent of available benefits under the plan she elected when compared to other benefit plans?

2. If her benefits were not properly calculated, or, if she has not received the actuarial equivalent of benefits under the plan she elected, what benefit amount should she now receive?

**STATUTES AND RULES INVOLVED**

1. North Carolina General Statute Section 135-5(g)

**APPEARANCES**

**Petitioner:** S. Luke Largess  
FERGUSON, STEIN, WATT, WALLAS, ADKINS and GRESHAM, P.A.  
Suite 730, East Independence Plaza, 700 East Stonewall Street,  
Charlotte, North Carolina

**Respondent:** Alexander McC. Peters  
Associate Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina

**WITNESSES**

**For Petitioner:** Mary Carraway Johnson, Petitioner

**For Respondent:** Timothy S. Bryan, Chief of Member Services,  
Teachers' and State Employees Retirement System

The parties entered the following:

STIPULATIONS

1. That all exhibits have been shared by the parties and that all are admissible as to authenticity, but exceptions as to relevance are reserved.
2. That Petitioner began receiving retirement benefits on July 1, 1976, under option 4 of the Respondent's various benefit options.

EXHIBITS

Editor's Note: The listing of exhibits was omitted from the Register publication. A copy may be obtained at a minimum charge by contacting the Office of Administrative Hearings.

FINDINGS OF FACT

1. Adequate Notice of Hearing was given and received by the parties.
2. Petitioner retired from public school teaching in North Carolina in 1976. Petitioner was 58 years old at the time of her retirement and had 24 years of creditable service.
3. Before electing among the various benefit plans provided by Respondent, Petitioner traveled to Raleigh, North Carolina and met with a benefits counselor employed by the Respondent. The benefits counselor's job involved explaining the various benefit plans to participants.
4. The Respondent's benefits counselor urged Petitioner to select Option Four of the various plans. This option provides a participant who retires before age 62 with a larger than normal monthly benefit until the participant turns 62 to compensate for the unavailability of Social Security benefits. Then, at age 62, the monthly benefit is reduced to less than the normal benefit with the goal that the combined monthly income from the retirement and Social Security benefits will approximate the monthly benefit paid prior to age 62. Because of the way it functions to keep income level during retirement, Option Four is called the social security leveling plan.
5. Pursuant to North Carolina General Statute Section 135-5(g), the amount of money paid to a participant under Option Four must be the actuarial equivalent to an amount that would be paid under any of the other options.
6. The agent for the Respondent did not show Petitioner any calculations or benefit schedules to compare Option Four to any of the other options she might elect. Instead, Respondent assured Petitioner she would not lose any money under Option Four, in comparison with the other options she could choose, until she was in her 80's.
7. Petitioner elected Option Four on the basis of the urging by the benefits counselor that Option Four was the best choice for her.
8. According to testimony from Timothy Bryan, Chief of Member Services for the Respondent, such suggestion or urging by a benefits counselor as to which plan or option is best is inappropriate and contrary to the training such benefit counselors receive.
9. Relying on the benefit counselor's urging, Petitioner chose Option Four.
10. Petitioner was assured, and the relevant statute requires, that she would receive under Option Four the actuarial equivalent of any other option.

11. Petitioner presented evidence from the Respondent's own records that showed that, as of, December 1991, she had received approximately \$7,100.00 less in benefits from the retirement system under Option Four than she would have received under Option One, another of the benefit plans she could have chosen in 1976. This amount is on contrast to the promise that she would not lose money until she was in her 80's; Petitioner is 76.

12. Timothy Bryan testified that the calculations for the various benefit options were made by actuaries working for the Respondent in accordance with standard actuarial practice.

13. Mr. Bryan is not himself an actuary and does not participate in the actuarial determinations made by Respondent.

14. Petitioner provided no evidence at the hearing concerning the calculation of the actuarial value of the money Petitioner had received under Option Four in comparison to what would have Option One.

15. The hearing was adjourned and the record left open to allow Petitioner the opportunity to provide evidence that the amount she had received was less in actuarial terms than what was available under another option. Petitioner could not provide such evidence.

Based on the foregoing Stipulations and Findings of Fact, the Administrative Law Judge makes the following:

**CONCLUSIONS OF LAW**

1. The parties were properly before the Office of Administrative Hearings.

2. The System is paying retirement benefits to Petitioner under the provisions of North Carolina General Statute Section 135-5(g).

Based on the foregoing Stipulations, Findings of Facts, Conclusions of Law, and a preponderance of the substantial evidence in the record, the Administrative Law Judge makes the following:

**RECOMMENDED DECISION**

That the appeal of the Petitioner is DENIED.

**ORDER**

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute Section 150B-36(b).

**NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. North Carolina General Statute Section 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the Board of Trustees of the Teachers and State Employees Retirement System.

This the 23rd day of December, 1992.

---

Sammie Chess, Jr.  
Administrative Law Judge



STATE OF NORTH CAROLINA

**COUNTY OF DARE**

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
92 EHR 0923

**C. V. TATEM,**  
**Petitioner.**

**V.**

## DIVISION OF MARINE FISHERIES, Respondent.

## RECOMMENDED DECISION

This matter came on for hearing before the undersigned administrative law judge on November 30, 1992, in Manteo.

The petitioner appeared pro se. Mr. Timothy D. Nifong represented the respondent. The petitioner presented one witness and introduced three exhibits. The respondent presented two witnesses and introduced four exhibits.

## ISSUES

Did the respondent lack probable cause in seizing the petitioner's clams?

If so, what compensation is the petitioner entitled to?

## FINDINGS OF FACT

1. On March 4, 1992, a law enforcement officer, employed by respondent, inspected the petitioner's seafood operation. The officer observed four small yellow bags of clams from Virginia labeled "Thomas E. Reed Seafood, Inc., Necks from Natural Bottom, to Manns Harbor Fisheries." The label also indicated that the clams were "under inch." The officer determined, after using a clam grader, that 69% of the clams were undersized.

2. Mr. Tatem informed the officer that the clams were purchased from an aquacultural operation. Mr. Tatem and the officer consulted a handbook with applicable fisheries regulations. The handbook contained 15A NCAC 3K .0305(b) (Eff. January 1, 1991) which stated:

Possession and sale of clams by a hatchery or clam aquacultural operation and purchase and possession of clams from a hatchery or clam aquacultural operation shall be exempt from bag and size limit restrictions in 15A NCAC 3K .0301(a). It is unlawful to possess, sell, purchase, or transport such clams unless they are identified in a manner that will permit immediate determination of the point of origin and the ultimate destination.

3. The officer seized the 760 clams. The officer's supervisor determined that an error had been made. The officer attempted to return the clams. However, Mr. Tatem would not accept the clams because of possible damage to the clams while the clams were not in his possession and control.

4. At 2:43 p.m. on March 4, 1992, the officer disposed of 120 pounds of clams at the sanitary landfill.

5. Thereafter, the Officer completed a citation charging C. V. Tatem with possessing undersize clams.

6. Clams are regularly bought and sold in North Carolina by the count. The wholesale price paid by the petitioner was 17 cents per clam. The retail price expected by the petitioner was 25 cents per clam.

**CONCLUSIONS OF LAW**

1. The officer lacked probable cause in seizing the 760 clams. Probable cause is determined by what the officer knew at the time of the seizure. Mr. Tatem informed the officer that the clams were from an aquacultural operation. The bags indicated the point of origin and the ultimate destination as required by the rule which both Mr. Tatem and the officer consulted before the seizure of the clams. According to the rule, the seized clams were exempt from bag and size limit restrictions.

2. The petitioner is entitled to compensation from the respondent pursuant to GS 113-137 in the amount of \$129.20 (760 X .17 = \$129.20).

**RECOMMENDED DECISION**

It is recommended that the respondent compensate the petitioner in the amount of \$129.20.

**ORDER**

It is hereby ORDERED that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statutes 150B-36(b).

**NOTICE**

The final decision in this contested case shall be made by the respondent. Each party has the right to file exceptions to the recommended decision and to present written arguments on the decision to this agency.

The agency is required by GS 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

This the 29th day of December, 1992.

\_\_\_\_\_  
Robert Roosevelt Reilly, Jr.  
Administrative Law Judge

*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

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3	Auditor	Barber Examiners	6
4	Economic & Community Development	Certified Public Accountant Examiners	8
5	Correction	Chiropractic Examiners	10
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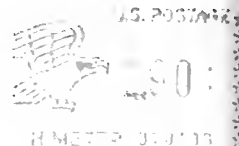
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